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Supreme Court of the United States

October Term, 1973

73-1164

DEERING MILLIKEN RESEARCH CORPORATION, *Petitioner*

v.

THE DUPLAN CORPORATION, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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DEERING MILLIKEN RESEARCH CORPORATION, *Petitioner*

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THE DUPLAN CORPORATION, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fourth Circuit entered September 27, 1973. The Court of Appeals affirmed a judgment of the United States District Court for the District of South Carolina granting summary judgment to the respondents on their claim that two United States patents are invalid; it thereby held that a foreign patent application which remains secret by force of law may nevertheless be a statutory bar to a United States patent.

Certiorari is warranted because the courts below adopted a misinterpretation of the law which could have a severe impact on the administration of the patent system.

Opinions Below

The opinion of the court of appeals, dated September 27, 1973, is reported at 179 U.S.P.Q. 449 (A1).[1] An opinion and order of the district court dated January 2, 1973 are reported at 353 F. Supp. 826 (A5). A further order of the district court dated February 21, 1973 is reported at 177 U.S.P.Q. 515 (A27).

Jurisdiction

The judgment of the court of appeals was entered September 27, 1973 (A1). A timely petition for rehearing with suggestion for rehearing *en banc* was filed October 24, 1973. An order denying the petition for rehearing was entered November 1, 1973 (A35). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Question Presented

Can an invention which is not accessible as of right to the public be deemed "patented" in a foreign country by virtue of a secret ministerial act, so as to bar a United States patent for the same invention?

Statute Involved

35 U.S.C. §102 is set forth in the appendix to this petition (A36).

1. "A" references are to the appendix to this petition.

Statement

For more than a century it has been a requirement of United States patent law that a patent be open to the public if it is to be set up as a statutory bar to an otherwise allowable United States patent application. The courts below have discarded this requirement, thus jeopardizing countless patents and sowing confusion in a critical section of the patent law.

The present petition arises from a consolidated patent-antitrust litigation pending in the United States District Court for the District of South Carolina. The petitioner, the exclusive United States use licensee of the patents in question, is the plaintiff in some of the consolidated proceedings and a defendant in others. Petitioner asserts patent infringement claims, and claims for breach of patent license agreements, against 17 firms (the so-called "throwsters") engaged in texturizing, or "throwing," yarn. The throwsters in turn seek declaratory judgments that the patents at issue are invalid and not infringed; they also assert antitrust claims against the petitioner and others. The jurisdiction of the district court is invoked under 15 U.S.C. §15 and 28 U.S.C. §§1331, 1332, and 1338.

The throwsters moved for summary judgment that two United States patents at issue were invalid under 35 U.S.C. §102(d) on the ground that the inventions they described were patented in France before the filing of the respective United States applications. The throwsters did not dispute that the inventions had not been disclosed to the public on the United States application date. The district court

granted the motion for summary judgment, and the court of appeals affirmed.

The controlling statute, 35 U.S.C. §102, provides in pertinent part:

> "A person shall be entitled to a patent unless—
>
> "(a) the invention was known or used by others in this country, or *patented* or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
>
> "(b) the invention was *patented* or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
>
> * * *
>
> "(d) the invention was first *patented* or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States * * *." [Emphasis supplied.][2]

The sole issue presented by this petition is the meaning of the word "patented" in §102, and in particular in subsection (d).

The applications for the French counterparts of the patents at issue were filed more than 12 months before the United States applications. The parties dispute whether the inventions were "patented" in France within the mean-

2. The references to the inventor's certificate in §102(d), which have no bearing here, were added to the statute subsequent to the events at issue on this petition.

ing of §102(d) on the *délivré* date, which preceded the United States applications, or on the publication date, which followed the United States applications. On the *délivré* date, a decree of issuance was executed in the French patent office, but the patent specification remained secret by operation of French law. The specification was not laid open for public inspection until approximately five weeks after *délivré*, coincident with the publication of notice of the patent in the *Bulletin Officiel de la Propriété Industrielle.*

The significance of publication is demonstrated by comparing the French patenting procedure to our own. In the United States, when the Patent Office decides to issue a patent, it sends a notice of allowance to the applicant; this corresponds to the French *délivré.* But the invention is not patented and the specification remains closed to public inspection until a later date, when a public document embodying the grant of exclusive proprietary rights issues from the Patent Office and simultaneously a notice and description are published in the Official Gazette.[3]

The parties here and the courts below all agree that if the publication date controls, the inventions were not "patented" in France before the United States applications and so do not bar the United States patents. The parties

3. The following chronology shows the relevant dates for the United States and French patents under consideration:

	U.S. Patent 3,137,119	*U.S. Patent 3,382,656*
French Application	June 8, 1960	November 13, 1964
French *Délivré*	June 12, 1961	December 27, 1965
United States Application	June 14, 1961	January 3, 1966
French Patent Publication	July 21, 1961	February 4, 1966

and courts further agree that the publication date is the first date upon which the contents of each French patent became available to the public as a matter of French patent law procedure. Moreover, it cannot seriously be disputed that the inventions were not "patented" in France within the meaning of 35 U.S.C. §§102(a) and 102(b) until the publication date.

Nonetheless, the courts below held that the unavailability of the foreign patent specification to the public on the *délivré* date made no difference, and that the signing of the French decree on that date triggered the statutory bar established by §102(d).

Reasons for Granting the Writ

As a reading of 35 U.S.C. §§102(a), (b), and (d) (quoted *supra*, at 4) makes clear, the word "patented" is frequently the key to determining when a reference will bar issuance of a United States patent. The importance of this question is self-evident. In particular, the effect under §102 of foreign references, such as those involved in this case, is of large and growing practical importance. Although an analysis of counterpart patenting in foreign countries and the United States does not appear to be available, the Patent Office reports that in 1971 alone some 33,000 United States patent applications were filed by residents of foreign countries; of these, nearly 3,000 were French. Commissioner of Patents, *Annual Report for Fiscal Year 1972*, at 23-24.

Thus, it is vital that the established interpretation of "patented," as it relates to foreign references, be clear

and consistent. It was clear and consistent until the decisions below. Until then, it was well established that the term "patented," as used throughout §102, connoted not only the grant of exclusive proprietary rights but also disclosure of the invention to the public.[4] A patent is, by definition, a public document.[5]

The decisions below change the law by permitting foreign reference to bar a United States patent even though the foreign reference is, by operation of foreign law, secret from the public; yet the court of appeals has not attempted to justify this extraordinary result, beyond the cursory statement that "the exclusive rights which the nature of a patent includes and envisions accrue to the inventor in France on the date of delivery rather than on the date of publication" (A2-A3).

Whether there is justification for such a departure from precedent in so important a statute should, we submit, be considered by this Court. No adequate justification appears either in the opinions or in the arguments made by the throwsters below.

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4. *E.g., Elizabeth* v. *Pavement Co.*, 7 Otto (97 U.S.) 126, 130 (1877) (predecessor to §102(a)); *Carter Products, Inc.* v. *Colgate-Palmolive Co.*, 130 F. Supp. 557, 564 (D. Md. 1955), *aff'd on other grounds*, 230 F.2d 855 (4th Cir.), *cert. denied*, 352 U.S. 843 (1956) (§102(a)); *In re Ekenstam*, 256 F.2d 321, 323-25 (C.C.P.A. 1958) (§102(b)); *American Infra-Red Radiant Co.* v. *Lambert Industries, Inc.*, 360 F.2d 977, 991-94 (8th Cir.), *cert. denied*, 385 U.S. 920 (1966) (§102(d)); *Ex parte Rackham*, 306 O.G. Pat. Off. 243 (Comm. Pat. 1922) (predecessor to §102(d)).

5. *In re Ekenstam, supra*, 256 F.2d at 323-24; *American Infra-Red Radiant Co.* v. *Lambert Industries, Inc., supra*, 360 F.2d at 994; *Schoerken* v. *Swift & Courtney & Beecher Co.*, 7 F. 469, 471-72 (C.C.S.D.N.Y. 1881).

A. The Decisions Below Needlessly Reject the Established Meaning of "Patented" in 35 U.S.C. §102.

The decisions below clearly hold that availability to the public is not an element of "patented" as that word is used in §102(d). It is not clear whether this holding extends to subsections (a) and (b) also—or whether the courts below view "patented" as retaining its established meaning under the two earlier subsections, while taking on a different meaning fifty words later in subsection (d). Certain language in the district court opinion (A16-A17) seems to distinguish §102(d) from the earlier subsections; but the decisions on which the district court primarily relied (A14-A15) arose under 35 U.S.C. §§102(a) and (b).[6] Likewise, the court of appeals refrained from stating whether its decision went beyond §102(d)—but one of the two cases it cites is a §102(a) case.[7]

Either the broader or the narrower holding would be inconsistent with prior law, as set forth in decisions of courts of appeals and district courts and in internal Patent Office rulings.

It is surely far too late to contend—and, indeed, the throwsters did not contend below—that the element of

6. *Sun Rubber Co.* v. *National Latex Products Co.*, 148 F. Supp. 469 (N.D. Ohio 1957), *aff'd in part, rev'd in part*, 274 F.2d 224 (6th Cir. 1959), *cert. denied*, 362 U.S. 989 (1960); *General Electric Co.* v. *Hygrade Sylvania Corp.*, 61 F. Supp. 476, 529 (S.D.N.Y. 1944); *Sirocco Engineering Co.* v. *B.F. Sturtevant Co.*, 220 F. 137 (2d Cir. 1914), *cert. denied*, 238 U.S. 636 (1915); *Ritter* v. *Rohm & Haas Co.*, 271 F. Supp. 313 (S.D.N.Y. 1967).

7. *Ritter* v. *Rohm & Haas Co.*, 271 F. Supp. 313 (S.D.N.Y. 1967).

availability to the public can be read out of the word "patented" throughout 35 U.S.C. §102. Sound authorities dating from 1851 to the present expressly hold that availability to the public is required. In *Brooks* v. *Norcross*, 4 F. Cas. 294, 296 (No. 1,957) (C.C.D. Mass. 1851), it was said, "The word 'patented' . . . must of course mean covered and *made known to the world* by a *public patent*, so as to bring home to the public . . . a knowledge of its existence . . . ." (Emphasis added). *Schoerken* v. *Swift & Courtney & Beecher Co.*, 7 F. 469, 471 (C.C.S.D.N.Y. 1881), held that an invention is not "patented" unless it is "laid open to the public." As *In re Ekenstam*, 256 F.2d 321, 323 (C.C. P.A. 1958), pointed out, "The word 'patent' is derived from the Latin 'patere,' meaning 'to be open,' and the significance of 'open' is still commonly attached to that word." To the same effect, see *Elizabeth* v. *Pavement Co.*, 7 Otto (97 U.S.) 126, 130 (1877); *Carter Products, Inc.* v. *Colgate-Palmolive Co.*, 130 F. Supp. 557, 564 (D. Md. 1955), *aff'd on other grounds*, 230 F.2d 855 (4th Cir.), *cert. denied*, 352 U.S. 843 (1956); *Ex parte Rackham*, 306 O.G. Pat. Off. 243, 244 (Comm. Pat. 1922).

There is no authority to the contrary of any substance. The cases principally relied on by the courts below either give no reasoned consideration to the issue,[8] or concern

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8. *Sun Rubber Co.* v. *National Latex Products Co.*, 148 F. Supp. 469 (N.D. Ohio 1957), *aff'd in part, rev'd in part*, 274 F.2d 224 (6th Cir. 1959), *cert. denied*, 362 U.S. 989 (1960) (dictum); *General Electric Co.* v. *Hygrade Sylvania Corp.*, 61 F. Supp. 476, 529 (S.D. N.Y. 1944).

other issues entirely,[9] or expressly assume that availability to the public is an element of the word "patented."[10]

In short, if the courts below meant to discard availability to the public from §102 altogether, their decisions are a clear-cut, and seriously harmful, aberration, which this Court should correct at once.

On the other hand, the decisions below are no more defensible if they are limited to subsection (d) of §102. The accepted meaning of "patented" has previously been applied under §102(d). *American Infra-Red Radiant Co.* v. *Lambert Industries, Inc.*, 360 F.2d 977, 991-94 (8th Cir.), *cert. denied*, 385 U.S. 920 (1966). *Ex parte Rackham*, 306 O.G. Pat. Off. 243, 244 (Comm. Pat. 1922), decided under the predecessor to §102(d),[11] held that a foreign patent was not a reference under that provision unless it was "open to the public." The opinions below may be searched in vain for any good reason supporting the creation of internal inconsistency in the meaning of "patented" in a

9. *Sirocco Engineering Co.* v. *B.F. Sturtevant Co.*, 220 F. 137, 142 (2d Cir. 1914), *cert. denied*, 238 U.S. 636 (1915); *Ex parte Gruschwitz*, 138 U.S.P.Q. 505 (Pat. Off. Bd. App. 1961)—both of which deny the necessity of *printing* a foreign patent if it is to be cited as a reference, but do not disturb the requirement of *public availability* (*i.e.*, laying open the patent specification) if it is to be cited as a "patent" at all.

10. *Ritter* v. *Rohm & Haas Co.*, 271 F. Supp. 313, 317, 319 (S.D.N.Y. 1967). *Ritter* held that, in the case of a 1944 French patent, the *délivré* date was the date of patenting under §102(a) because French patents of that era were opened for public inspection on that date. 271 F. Supp. at 318-19. It is undisputed that French practice has since changed, and that the French counterparts of the patents here at issue were not available to the public on the *délivré* date. See Federico, *Foreign Patent Material* (pt. 2), 54 J. PAT. OFF. SOC'Y 147, 157 (1972).

11. Revised Statutes §4887.

crucial statute. Any differences among the policies underlying the different subsections of §102 are amply reflected in the different express provisions which Congress enacted. No court or party below ever suggested any adverse consequences that would flow from giving "patented" its normal meaning in §102(d).

To the contrary, the danger of adverse consequences is created by inconsistency. In a statute fixing time barriers, fundamentally similar to a statute of limitation, inconsistency can produce nothing but mischief.

The inconsistency suggested may appear to find support in two decisions—*In re Talbott,* 443 F.2d 1397 (C.C.P.A. 1971), and *Ex parte Weiss,* 159 U.S.P.Q. 122 (Pat. Off. Bd. App. 1967)—which were relied on strongly by the throwsters below, though not cited by the court of appeals. However, some unconsidered dicta should not be allowed to obscure the holdings of these two cases. Both cases concerned German design patents which had been withheld from the public not, as in this case, by the impartial operation of law, but *by the voluntary choice of the patent applicant*; it was held that these German patents could therefore, despite their secrecy, be used as a reference against the same applicant in the United States.

The principle underlying these two decisions is that one who has voluntarily withheld disclosure of his patent abroad should not be permitted thereby to enlarge his rights in the United States or to toll the running of §102(d). This principle has no application to this case—or to countless other cases in which a patent applicant does not con-

trol the date on which a foreign government discloses his invention to the public.

There is, in short, no justification for the abrupt departure from the established meaning of "patented" which has been sanctioned by the courts below.

B. The Decisions Below Are Contrary to the Philosophy Behind the Patent Laws.

It is not just by accident that availability to the public has been a recognized element of the word "patented" for at least 120 years. Since the early days of the Republic, Congress has implemented the constitutional authority "to promote the Progress of Science and useful Arts" (art. I, §8) through a "contractual" patent system in which availability to the public is a key element.

Our patent system grants an inventor exclusive property rights for a limited time, *in exchange for the inventor's expeditious disclosure of new technology in this country.* The patent "is the reward stipulated for the advantages derived by the public for the exertions of the individual, and is intended as a stimulus to those exertions." *Grant* v. *Raymond,* 6 Pet. (31 U.S.) 218, 242 (1832) (Marshall, C.J.). See *Kewanee Oil Co.* v. *Bicron Corp.,* 478 F.2d 1074, 1081-82 (6th Cir. 1973), *cert. granted,* —— U.S. ——, 42 U.S.L.W. 3194 (Oct. 9, 1973) (No. 73-187).

The word "patented" in 35 U.S.C. §102 must be interpreted in a way consistent with this fundamental philosophy. The three subsections of §102 that deal with prior patenting—35 U.S.C. §§102(a), (b), and (d)—all limit the

conditions under which an inventor may trade disclosure for proprietary rights. These sections all deny such rights, under specified circumstances, to an inventor who does not have something new to teach the public.

Thus, §102(a) denies a patent when the invention was available to the public before the applicant's invention whether through knowledge or use by others, description in a printed publication, or a patent. Similarly, subsection (b) denies a patent when the invention was available to the public more than a year before the date of application, whether by description in a printed publication, public use or sale, or—again—a patent. Under both subsections, the teachings of a prior patent must be available to the public before it can bar the inventor from claiming that he has useful knowledge to impart to the public, in return for which he should receive the protection afforded by the patent system.

Subsection (d) addresses itself to the applicant for a United States patent who has previously applied for a foreign patent on his invention. This part of the statute alerts him that the consideration for obtaining United States patent protection is that he, too, must have novel knowledge to impart—and must do so expeditiously. Should he delay the filing of his United States application for more than one year following his foreign filing, he will be foreclosed from United States rights if his invention becomes "patented" abroad before he files his United States application.

The courts below gave to the word "patented" in this subsection an interpretation which makes availability to

the public irrelevant. This interpretation undermines the fundamental policy of §102. Under the decisions below, an applicant whose invention has not been made publicly available, and who thus still has something new to offer, may nevertheless be barred from obtaining a United States patent.

Thus, not only precedent, but the very purpose of the controlling statute, supports the established definition of "patented" which was rejected by the courts below.

C. The Decisions Below Raise and Do Not Resolve Questions Concerning the Validity of Innumerable Patents Which Were First Applied for Abroad.

The decisions below, in disregarding availability to the public and making the accrual of proprietary rights the only test of whether an invention is "patented," not only unjustifiably change and confuse the law; they raise the possibility of consequences that could not have been desired by the courts below.

At the time here in question (and today), proprietary rights accrued in France not on the *délivré* date, as the court of appeals assumes (A2-A3), but at the moment the French application was filed. K. Katzarov, *Manual and Directory on Industrial Property All Over the World* 213 (7th ed. 1970) (beginning of protection is date of filing). Although the court of appeals did not suggest that the date of patenting is the date of filing, and although that position was never advanced by any party below, the logic of the court's opinion seems to require that bizarre result—a

result that ignores the distinction made in §102(d) between the date when a foreign application is "filed" and the date when the invention is "patented" in a foreign country.

Because of the inconsistency between the apparent holding of the courts below (which makes the *délivré* the date of French patenting) and the rationale of the courts below (which would make the application date the date of French patenting), it is now unclear when an invention is patented in France under §102(d). And, since the courts below refer to cases construing §§102(a) and (b), the confusion is not limited to subsection (d).

Moreover, the confusion is not limited to applications which were first filed in France. There are several other countries—including Belgium, Italy, Norway, and Sweden, to name only a few—where proprietary rights accrue to an inventor as of the date of the patent application, although granting and publication occur later. K. Katzarov, *Manual and Directory on Industrial Property All Over the World* 187, 276-77, 322, 372 (7th ed. 1970). The status of all United States patents based on prior filings in such countries is cast in doubt by the decision below.

Conclusion

For the foregoing reasons, the petitioner prays that its petition for a writ of certiorari be granted.

Respectfully submitted,

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January 28, 1974.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-1357

THE DUPLAN CORPORATION, *et al.*,

Appellees,

versus

DEERING MILLIKEN RESEARCH CORPORATION,

Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Robert W. Hemphill, District Judge.

Argued: June 5, 1973 Decided: September 27, 1973

Before BRYAN, Senior Circuit Judge, and FIELD and WIDNER, Circuit Judges.

Simon H. Rifkind (Butler, Means, Evins and Browne; Paul, Weiss, Rifkind, Wharton and Garrison; Morgan, Finnegan, Durham and Pine; Thomas A. Evins and Robert S. Smith on brief) for Appellant. Paul B. Bell and William K. West, Jr., (Parrott, Bell, Seltzer, Park and Gibson; Willkie, Farr and Gallagher; Leatherwood, Walker, Todd and Mann; Cushman, Darby and Cushman; Haynsworth, Perry, Bryant, Marion and Johnstone; Smith, Moore, Smith, Schell and Hunter; David Rabin; Perrin, Perrin and Mann; John W. Malley, W. Warren Taltavull and Michael R. Abel on brief) for Appellees.

PER CURIAM:

Deering Milliken Research Corporation appeals from an order of the district court granting summary judgment holding two United States patents invalid under 35 U. S. C. §102(d)[1] on the ground that the claimed inventions had been patented in France prior to the applications for the United States patents on applications which had been filed in France more than twelve months prior to the United States applications. Involved are United States Patents No. 3,137,119 and No. 3,382,656 and their French counterparts Nos. 1,267,239 and 1,427,001, respectively.

The primary issue upon this appeal is whether an invention is "patented" in France within the meaning of 35 U. S. C. §102(d) when a decree of issuance is signed by the French Patent Office (the délivré date) or the date that its contents are made available to the public by publication in the Bulletin Officiel de la Propriete Industrielle (BOPI). Additionally, the appellant contends that the invention described and claimed in French Patent No. 1,427,001 is not identical, as a matter of law, to the invention described and claimed in United States Patent No. 3,382,656.

It is conceded that in each instance the application in the United States was filed after the delivery date (délivré) of the French patent, but before it was published in the BOPI. In his original and supplemental opinion and order the district judge carefully analyzed the French patent procedure and concluded that the exclusive rights which

1. 35 U. S. C. §102(d) reads as follows:

"A person shall be entitled to a patent unless—

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States, * * *"

the nature of the patent includes and envisions accrue to the inventor in France on the date of delivery rather than on the date of publication.[2] Upon our review of the record and the briefs we agree with the district court that in the context of Section 102(d) under the French procedure délivré is the operative patent date. *See Ritter* v. *Rohm & Haas Company,* 271 F. Supp. 313 (S.D.N.Y. 1967); *Ex parte Gruschwitz,* 138 U.S.P.Q. 505 (Pat. Off. Bd. App. 1961).

We also agree with the conclusion of the district court that French Patent No. 1,427,001 and its United States counterpart No. 3,382,656 are for all intents and purposes identical. The district judge had before him the French patent together with an English translation, and while he noted that the American patent contained more detailed specifications and claims than the French version, he found that this was attributable to the procedural requirements of the United States Patent Office and did not change the basic nature of the invention. The contention of the ap-

2. In his opinion which is reported at 353 F. Supp. 826, the district judge summarized the French patent procedure as follows:

> "In France, the patent office is concerned primarily with (1) novelty and (2) industrial impact. Once a given application has satisfied the filing requirements and been processed, it is ready for delivery (delivré), and some four weeks after delivery it is published in the BOPI. * * * The deliverance date is the date of the signing or facsimile of signing by the patent ministry, or minister, and upon that date, and thereafter, the inventor who receives the patent, at his discretion, may disclose the contents of his application to third parties, for selling or other considerations. The applicant has the right to request a postponement for one year in 'deliverance.' The publication and making available to the public, is the publication of the 'ABREGE descriptive' (summary specification in the official gazette). The moment of publication is considered to be the point of time when the official gazette (BOPI) is brought from the French National Printing Office and physically enters the reading room on the ground floor of the INPI [Institute Nationale de la Propriete Industrielle (French Patent Office)]."

pellant that the American patent contains significant and distinguishing improvements is readily answered by the observation of the Court in *Siemens* v. *Sellers,* 123 U. S. 276, 283 (1887):

> "It is contended by the counsel of the complainants, that the American patent contains improvements which are not exhibited in the English patent. But if this were so, it would not help the complainants. The principal invention is in both; and if the American patent contains additional improvements, this fact cannot save the patent from the operation of the law which is invoked, if it is subject to that law at all. A patent cannot be exempted from the operation of the law by adding some new improvements to the invention; * * *."

Summary disposition by the district court was appropriate and the judgment below is affirmed.

AFFIRMED.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

SPARTANBURG DIVISION

THE DUPLAN CORPORATION,
Plaintiff,

v.

DEERING MILLIKEN, INC., DEERING MILLIKEN RESEARCH CORPORATION, MOULINAGE et RETORDERIE de CHAVANOZ, ATELIERS ROANNAIS de CONSTRUCTIONS TEXTILES, and ARCT, INC.,
Defendants.

CONSOLIDATED CIVIL ACTION
No. 71-306

Filed
Jan. 2, 1973
Miller C. Foster, Jr., Clerk

DEERING MILLIKEN RESEARCH CORPORATION,
Plaintiff,

v.

THE DUPLAN CORPORATION and BURLINGTON INDUSTRIES, INC.,
Defendants.

CIVIL ACTION No. 70-968 and
CIVIL ACTION No. 69-1096

THE DUPLAN CORPORATION, *et al.*,
Plaintiffs on the Counterclaim,

v.

DEERING MILLIKEN RESEARCH CORPORATION,
Defendant on the Counterclaim,

and

DEERING MILLIKEN, INC., MOULINAGE et RETORDERIE de CHAVANOZ, ATELIERS ROANNAIS de CONSTRUCTIONS TEXTILES, and ARCT, INC.,
Additional Defendants on the Counterclaim.

ALSO CIVIL ACTION NOS.
68-705; 69-777;
70-14; 70-189;
70-250; 70-295;
70-358; 70-385;
70-386; 70-391;
70-493; 70-622;
70-628; 70-677;
70-683; 71-87;
71-88; 71-89;
71-90; 71-91;
71-92; 71-93;
71-94; 71-95;
71-96; 71-97;
71-98; 71-99;
71-100; 71-101;
71-102; 71-115;
71-126; 71-127; and
71-283.

On February 4, 1972, plaintiff Throwsters, pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure, filed in this court a motion for summary judgment of invalidity as to two separate United States patents. The first motion seeks an order of this court declaring invalid and void United States Patent 3,382,656, filed January 3, 1966, and issued May 14, 1968, in the name of Henri Crouzet, (and assigned to Chavanoz) for "False Twist Frames and Method for Texturing Synthetic Filaments," including all claims of the said patent, on the theory that the American patent is invalid under the provisions of 35 U.S.C. 102(d)[1] because the alleged invention of the American patent was first patented by the applicant in France (December 27, 1965) prior to the date of the application in this country (January 3, 1966), and application having been filed in France (November 13, 1964) more than twelve months before the filing in the United States. The French patent in question before the court is plaintiffs' Exhibit No. 638, the same being French Patent 1,427,001.

An identical motion was made to have this court declare invalid U. S. Patent 3,137,119, filed June 14, 1961, issued June 14, 1964, in the name of Henri Crouzet, including all claims of said patent(s) pursuant to 35 U.S.C. 102(d). As to this patent, plaintiffs claim that on June 12, 1961, prior to the date of the application in this country on June 14, 1961, a patent was issued to Ateliers Roannis de Construction Textiles (a French corporation hereinafter

1. 35 U.S.C.A. §102(d) provides: Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless—

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States.

referred to as ARCT) on an application filed in France June 8, 1960, more than twelve months before the filing in the United States. (See Exhibit No. 788 which has a copy, in French, of French Patent 1,267,239.)

In addition to seeking a declaration of invalidity, plaintiffs seek to enjoin the defendants from ever again asserting or charging an infringement or seeking to collect royalties on the patents, and ask for attorneys' fees, a return of all royalties previously collected, damages, and other relief.

It is admitted that the defendants, or some of them, have sued the plaintiffs for infringement, and as noted in *Monsanto Co.* v. *Rohm and Hass Co.* (E.D.Pa. 1970), 312 F.Supp. 778, 792, under the decisions of the United States Supreme Court, one who is sued for patent infringement may challenge the validity of the patent on the ground that it was fraudulently procured, or because the patentee was guilty of some other inequitable conduct or bad faith in his proceeding before the patent office. *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U.S. 172, 86 S.Ct. 347, 15 L.Ed.2d 247 (1965); *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.*, 324 U.S. 806, 65 S.Ct. 993, 89 L.Ed. 1381 (1945); *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Keystone Driller Co.* v. *General Excavator Co.*, 290 U.S. 240, 54 S.Ct. 146, 78 L.Ed. 293 (1933). Thus, it is obvious that the plaintiff has the right to pursue the motion which is here for a decision.

For the purpose of this record, we can consider the two American patents as having the same posture and the two French patents as having the same posture, that is, in each instance, the application in the United States was filed after the delivery date of the French patent, but before the French patent was published in the *Bulletin Of-*

ficiel de la Propriete Industrielle (BOPI). It is admitted that in each instance the delivery date of the French patent was prior to the United States application, and the date of publication in the BOPI was after the application was made in the United States. As to each of the American patents, application was made in the name of Henri Crouzet, as inventor. As to each of the French patents, application was made in the name of Ateliers Roannis De Constructions Textiles S.A. over the signature of Leo Soep. Henri Crouzet has been identified throughout the record in this case as an officer and/or president of ARCT, and Leo Soep has been identified as a brevet in patents frequently employed by ARCT to procure the French patents. All of this is a part of the record upon which this court must make its decision.

Initially, this court has to determine whether or not the French patents and the United States patents are, for all intent and purposes, identical. The arguments as to identity, displayed before the court, were only as to United States Patent 3,382,656, and French Patent 1,247,001.[2] The court has before it, and had at the time of the hearing of the motion, a copy of the French Patent 1,247,001, with an English translation, and a copy of U. S. Patent 3,382,656. An examination of the language of French patent 1,247,001, as issued by the Institute Nationale de la Propriete Industrielle (INPI) (French Patent Office) and the patent issued by the U.S. Patent Office 3,382,656, leaves no question but that the patent applied for, in each instance, was for the same and identical improvements in False Twist Frames to Texture Synthetic Yarns. It is true that the language in the American patent contains some additions[3]

2. It is agreed that the ruling of the court as to these patents will apply equally to U. S. Patent 3,137,119 and French Patent 1,267,239.

3. It is apparent that the American Patent Office requires more in the way of proof and explanation in the application, explanation and claims, than does the French Patent Office.

but this does not change the basic nature of the invention (improvement) sought to be patented. The drawing attached to the French patent is a very simple drawing[4] and the drawing attached to the American patent has two figures, Figure One and Figure Two. A comparison of Figure One on the American patent, and the drawing attached to the French patent leaves no doubt but that to identify one is to identify the other, and that the figures on the respective patents represent the same idea or improvement sought to be patented. In addition, counsel for the plaintiffs read into the record of the hearing of the motion a letter from Mr. Soep (of ARCT) to Dr. Norman Armitage (of Deering Milliken Research Corp., hereinafter called DMRC) apparently written and dated in Paris November 8, 1964, containing this language:

> Please find herewith a translation made in Great Britain of a patent application filed in France by our company on the 14th of November, 1964.
>
> We beg you to examine whether a corresponding application should be filed in the United States.
>
> If you choose to file we want you to postpone the filing until the end of the priority period. Of course, you may adopt [sic] the wording in any suitable way; the translation does not seem to be very good.

In an obvious reply to this letter, of date December 12, 1964, Dr. Armitage wrote to Mr. Soep:

> Thank you for sending me with your letter of December 8th a translation of the patent application filed in France by Chavanoz relating to loom improvements. I am passing it along to Walter Mueller for examination of the subject matter and to

4. It appears that a drawing, schematic or otherwise, is not a requirement of French patent law.

> decide whether it will be advantageous to file a corresponding application in the United States prior to November 13, 1965.

It may be that another application was contemplated. If so, this was not pressed or explained by the defendants, in any way, and Soep and Armitage are no longer available for clarification (both Soep and Armitage are deceased). Absent any indication that another invention was contemplated, the court, reconciling the dates in the letters with the dates on the patents before it in connection with this motion, is led to conclude that the inventions under study are those involved.[5]

It is significant that the added language in the American patent does not change the process sought to be patented. The comparative language of the patents is reproduced as Appendix "A" of this Order for the purpose of comparison.

Introduced into the record of the case, and relied upon by plaintiffs' counsel, is the File Wrapper[6] for original Patent 3,382,656. This shows that Moulinage Et Retorderie De Chavanoz, Chavanoz (ISERE) France, a corporation of France, assigned the patent rights or rights of application to Henri Crouzet, of Lorie, France. The principal attorneys shown are Dr. Norman C. Armitage and Walter E. Mueller, with correspondence to be sent to Walter E. Mueller, Post Office Box 1927, Spartanburg, South Carolina. The testimony reveals that both Armitage and Mueller were, at this time, acting for and in the employ of DMRC. On page 9 of the File Wrapper is a statement dated December 17, 1965, over the signature of Henri Crouzet, and which reports a blank at the end, as follows:

5. The letters have been handed to the Clerk and she has been ordered to make them a part of the official record, since they were read without objection; they are now exhibits in the file of the case.

6. Exhibit No. 951.

> I do not know and do not believe this invention was ever known or used before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention or discovery has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; and that no application for patent on this invention or discovery has been filed by me or my representatives or assigns in any country foreign to the United States except as follows:
>
> [Blank]

The space indicated after the word "follows" was blank so that the file reflects M. Crouzet's representation that he did not know of the patent about which Soep had written to Armitage. This has an overtone which may bring into play the equity powers of this court, but the issue of law requires immediate attention. The morality of this representation, or misrepresentation, of course, may be discussed later by counsel, if they desire.

Before entering any discussion as to the delivery date or the publication date of the French patent in France, the court takes judicial notice of the fact that the processing of a patent in the United States and the processing of a patent in France greatly differ. In France, the patent office is concerned primarily with (1) novelty and (2) industrial impact. Once a given application has satisfied the filing requirements and been processed, it is ready for delivery (delivré), and some four weeks after delivery it is published in the BOPI. An example of that may be found in the French patent under consideration which

shows, "demandé de le 13 novembre 1961 á 14^h 39^m, à Paris; Delivré pararrété du 27 decembre 1965." (Bulletin Officiel de la Propriete Industriele, no 6 de 1966). The deliverance date is the date of the signing or facsimile of signing by the patent ministry, or minister, and upon that date, and thereafter, the inventor who receives the patent, at his discretion, may disclose the contents of his application to third parties, for selling or other considerations. The applicant has the right to request a postponement for one year in "deliverance." The publication, and making available to the public, is the publication of the "ABREGE descriptive" (summary specification in the official gazette). The moment of publication is considered to be the point of time when the official gazette (BOPI) is brought from the French National Printing Office and physically enters the reading room on the ground floor of the INPI.[7] (Mm. Carpentier cited an example in which, through an accident, the delivery truck coming from the southern part of Paris was unable to make delivery by INPI office closing hours, making it therefore necessary to issue an "Erraturn" notice to correct the publication date).

The thrust of plaintiffs' argument is that, in each instance, upon the delivery date, each French patent was

7. While in Paris sitting as an American court for the purpose of taking live depositions of French witnesses unable to travel to the United States, this court, accompanied by counsel for plaintiffs and for defendants, and an interpreter, visited the French Patent Office. While there, by means of an interpreter, a colloquy was had with a French lawyer of the Patent Office, who was also Director of Public Relations, Madame Carpentier. Because of objections by counsel, Ms. Carpentier was not allowed to give the French definitions of the term "deliverance," "Arrete", or "Abrege descriptif." The court observed then, and later, that he would prefer to have the French Court say when a patent came into being, or when a process became a patented process, rather than have an American Court interpret the impact of the French processing apparati. This was objected to by counsel, and so this court is put in the position of having to interpret, by application of American law, the impact of the activities in France on the French patent in question. This court must interpret the effect of "delivré" and "publication."

issued, and the invention was patented or caused to be patented by the applicant on that date. There is no question but that the French application, in each instance, preceded the application for a patent in this country by more than twelve months, which is one of the two requisites affecting validity under 35 U.S.C.A. 102(d). The contention of the defendants is that the date of publication in the official bulletin, in each instance, is the date the invention was patented, as that completed the French processing of the patent. Defendants contend that until the processing was complete, the invention was not available to the public so as to comprise a date upon which the motion could hang.

Initially, this court must consider what a patent is and what it does. A patent confers upon the owner the right to exclude others from making, using or selling the invention during the life of the patent.[8] *Bell International Corporation* v. *United States* (U.S. Court of Claims, 1967), 381 F.2d 1004, 1010. A patent by its very nature is affected with a public interest. As recognized by the Constitution it is a special privilege, designed to serve the public purpose of promoting the "progress of Science and useful Arts." At the same time a patent is an exception to the general rule against monopolies and to the right of access to a free and open market. *Monsanto Co.* v. *Rohm & Hass Co.*, (CCA 3, 1972) 456 F.2d 592, 598. A patent is a species of property, and gives the patentee exclusive right to make, use and vend the invention of discovery for a limited period. That is to say, it carries for the statutory period "a right

8. 35 U.S.C.A. 154 provides: Contents and term of patent.

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of issue fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

to be free from competition in the practice of the invention." *Transparent-Wrap Machine Corporation* v. *Stokes Company* (1947), 329 U.S. 637, 643, 67 S.Ct. 610, 614. Each patent gives its owner a monopoly in respect to its disclosures, so much and no more. It is the grantor of the exclusive right to manufacture, use and sell the invention which it discloses and the particular invention is what the patent grant protects by the monopoly, not that invention plus some embellishment, improvement, or alternate product or process which also happens to be patented. *Motion Pictures Patent Co.* v. *Universal Film Co.* (1917) 243 U.S. 502, 511-513, 37 S.Ct. 416, 61 L.Ed. 871; *American Securit Co.* v. *Shatterproof Glass Corp.*, 268 F.2d 769, 777 (3rd Cir. 1959). A patent is not the granting of a right to make, use or sell, a grant is only the right to exclude others from making, using or selling the patented device (see 35 U.S.C. §154, infra). A patent is a legitimate monopoly having as its primary purpose the advancement of the arts and sciencies rather than reward to the individual. It is not a certificate of merit, but an incentive to disclosure. *Valmont Industries Inc.* v. *Yuma Manufacturing Co.* (D. Colo. 1969), 296 F.Supp. 1291, 1294. The patent privilege and the reason for its existence leads to the concept of enforcement of this right. Recognizing that the patentee is granted this exclusive right insofar as his invention is concerned, the "heart of this legal monopoly is the right to invoke the State's power to prevent others from utilizing his discovery without his consent." *Zenith Radio Corp.* v. *Hazeltine Research Inc.*, 395 U.S. 100, 135, 89 S.Ct. 1562, 1583, 23 L.Ed.2d 129 (1969).

The question narrows to "upon what date, under the patent processes of France, did ARCT gain the rights which the very nature of a patent includes and envisions." It affirmatively appears to this court that those inventor's exclusive rights which a patent envisions, accrued on the delivery (delivré) date. On that date the inventor-patentee

could sell, trade, publish or otherwise do as he wished. The seal of the ministry was affixed and the making known to the public was a matter which did not impede, change or otherwise limit the right granted on the delivery (delivré date). Of doubtful authority because of its ancient vintage by virtue of the changes in the French patent law, is *Sirocco Engineering Company* v. *B. F. Sturtevant Co.*, (CCA 2 1914), 220 F.Rpt. 137, 143. There the court in speaking on the question of when the process was patented in France said:

> No patent can issue here for that which is patented in a foreign country and it is patented there the moment it is sealed and enrolled. *Iresom* v. *Pierce* (CC) 39 F. 795.

Of value to this discussion is *General Electric Co.* v. *Highgraves Sylvania Corp.*, 61 F.Supp. 476 (S.D. N.Y. 1944), wherein, in construing the effective date of a Belgian patent, the court was constrained to hold that the date Phillip's invention was patented in Belgium was the date of the decree issuing the patent, which was November 30, 1928, and not the date of publication, January 19, 1929. To the same effect is *Sun Rubber Co.* v. *National Latex Products Co.*, 148 F.Supp. 469, 470 (N.D. Ohio 1957), wherein, in construing time for the application of 35 U.S.C.A. 102(b), the court said that an Italian invention was "patented" on the date the patent was granted in Italy, notwithstanding that the patent was not printed until a later date.[9] In *Ritter* v. *Roman Harris Company* (S.D. N.Y. 1967), 271 F.Supp. 313, 317, in construing the meaning of the word patented under the French law, the court stated:

> There is no dispute that, in France, all the rights of a patentee accrue to him on the "delivré" date

9. While this case discusses a ruling under Section 102(b) of Title 35 nevertheless the reasoning would be more appropriate for Section 102(d).

of his patent. On that date the Ministry of Industry grants the application by signing a decree. Soon afterward the patent office notifies the applicant. As of the "delivré" date, the patentee acquires a monopoly right to exclude others and he can sue for infringement. However, unlike American patents, French patents are not published on the same day they are granted. Here, the fact that the Farber application had been granted was not published in the Bulletin Official de la Propriete Industriele (the BOPI) until July 6, 1945 and the text of the patent was not published in printed form until August 28, 1945.

Of significant note in the application of this case to the facts before us is the fact that under 35 U.S.C. 102(d) there is no requirement of "availability to the public." Such requirement has been ascribed to 35 U.S.C. 102(a) and 35 U.S.C. 102(b).

Defendant urges upon the court that the provisions of 35 U.S.C. 102(b) and 35 U.S.C. 102(d) are, in effect, the same. If such were true, the necessity for 35 U.S.C. 102(d) would be eliminated. This court has already noted that 35 U.S.C. 102(b) makes specific reference to publication while there is a patent absence of any reference to publication in 35 U.S.C. 102(d). A careful reading of §§102(a) and 102(b) as contrasted with §102(d) discloses that the former are concerned with patent applications in this country by persons other than the person holding the patent in a foreign country. Section 102(d) however is indisputably addressed to the inventor or his representative who has filed an application and been granted a patent in a foreign country, and then endeavors to patent the *same invention* in this country. Viewed in this light, it becomes clear that the omission of any reference to publication in §102(d) is a meaningful omission, as the inventor or his

representative would have knowledge of the issuance of the patent without any general publication. The requirement of publication in §102(a) and §102(b) is clearly to insure that persons, *other than the inventor or his representative,* are given notice of the existence of the patent.

Defendants also urge upon the court reasoning applied in cases involving secret registrations. Such is *Ex Parte Weiss* (Patent Office Board of Appeals, 1967), 159 U.S. Patent Quarterly 122, *In Re Ekenstam,* 45 CCPA 1022, 256 F.2d 321, and other similar cases. This court does not have, in this case, an issue of secret registration. The line of cases is not controlling.

In this case, the French inventor received from the foreign country the exclusive privilege that his laws provided for on the delivery (delivré) date of each French patent. Therefore, the American invention, in each instance, was first patented or caused to be patented by the applicant, or his legal representatives or his assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States. The American patentee was not entitled to the patent issued him in each instance. Because of the provisions of 35 U.S.C.A. §102(d), each of the American patents is invalid.

The motion to declare invalid the two American patents 3,382,656 and 3,137,119, is granted.

This court will, at some future date, set a hearing and hear counsel on the question of attorneys' fees, damages and related issues.

And It Is So Ordered.

Robert W. Hemphill
United States District Judge

Rock Hill, South Carolina

January 2, 1973.

Appendix A

*French Patent 1,427,001**	*United States Patent 3,382,656*
It is known how to texturize synthetic yarns on false twist frames, i.e., comprising spindles giving the yarns a false twist which goes back up in the heating elements, assuring the setting of the false twist upon further cooling. This texturizing process has been greatly developed in recent years and at the same time the necessary equipment has undergone a considerable evolution.	It is known to texture synthetic filaments on "false-twist" spinning frames, i.e., spinning frames comprising spindles which impart to the filaments a false twist which progresses backwards into a heating element, which set the false twist on subsequent cooling. This texturing method has been very greatly developed in recent years and the equipment required has at the same time undergone a considerable change.
In one of the systems used in this field the yarns undergo heating in contact with stationary convex metal heating elements. Initially, hollow elements had been provided with interior circulation of a fluid heated to a regulated constant temperature. Then, electric current also was used with suitable regulation. The device used was first a curved metal channel, called "umbrella ribs," itself constituting the electric resistance heated by Joule effect. Then this channel was replaced by a curved metal tube previously mounted in an electric resistance. The tubes	In one of the systems employed in this field, the threads undergo the heating in contact with fixed convex metallic heating elements. Initially, hollow elements were provided through which there was circulated a fluid heated at a regulated constant temperature. Subsequently, electric heat was employed also with appropriate adjustment. The device employed was first of all a bent metallic channel, called an "umbrella rib," which constituted in itself the electric resistor heated by the Joule effect. This channel was later replaced by a bent metallic tube connected as before as an

* As translated by Harvard Translating & Editorial Service, 927 Fifteenth Street, N. W., Washington, D. C. 20005 [Exhibit 638-B].

Appendix A

French Patent 1,427,001	*United States Patent 3,382,656*
had the advantage of an easier thermal insulation. All the tubes were joined in series and were carefully calibrated to assure a constant temperature from tube to tube.	electric resistor. Tubes had the advantage that they were more readily thermally insulated. All the tubes were connected in series and were carefully calibrated to ensure a constant temperature from tube to tube.
To measure the temperature and for its regulation, at least one of the tubes of the frame was free of yarn and contained a thermal probe connected to control and regulating instruments.	For measuring the temperature and for adjusting it, at least one of the tubes of a spinning frame was free from filament and contained a temperature probe connected to monitoring and adjusting instruments.
The object of the present invention is a heating tube for false twist frames with a section with several lobes subdividing the tube into several twin channels, one channel containing an electric, elastic probe, whereas the other channels permit the passage of the yarns to be heated. Each active channel is part of a work position with the other usual elements, i.e., particularly, a delivery reel, delivery rolls, a false twist spindle and a receiving reel.	The object of the present invention is to provide a heating tube for "false-twist" spinning frames having a cross-section comprising a number of lobes subdividing the tube into a number of coupled channels, one channel containing a resilient electric probe, while the other channels permit the passage of filaments to be heated. Each active channel forms part of an operating position with the other usual elements, i.e., notably a supply reel, delivery members, a false-twist spindle and a take-up reel.
The invention extends not only to the curved tubes with direct	The invention not only includes bent tubes directly, electrically

French Patent 1,427,001	*United States Patent 3,382,656*
electric heating by resistance, but also to the straight tubes. Heating can also be indirect. In any case, the invention is in no way limited to the following embodiment, but covers any variant in the same spirit. The purpose is a heating element with several parallel channels one of which contains a thermal probe, whereas the others serve for passage of the yarn, the probe being under the same thermal conditions as the yarns.	heated by resistance, but also straight tubes. The heating may also be indirect. In any case, the invention is in no way limited to the following embodiment, but covers any variant in the same spirit. The object is to provide a heating element comprising a number of parallel channels, one of which contains a temperature probe, while the others serve for the passage of filament, the probe being subjected to the same thermal conditions as the filaments.
The system further has the advantage of permitting the multiplication of the production of frames which is obviously governed in the first place by the number of yarn passage channels. With tubes having a section with three lobes, production is doubled for the same working rate. Another advantage is that each working position can be controlled effectively in regard to the thermal conditions.	In addition, the system has the advantage that it permits multiplication of the output of the spinning frames, which is obviously primarily determined by the number of channels for the passage of filament. With tubes having a cross-section comprising a plurality of lobes, particularly three lobes, the output is doubled for the same working speed. Another advantage is that each working position may be effectively controlled in regard to the thermal conditions.
The example of embodiment will make it possible to understand better the invention which is illustrated by the hypothetical drawing on the accompanying sheet.	The embodiment will enable the invention, which is illustrated by the diagrammatic drawing on the accompanying sheet, to be more readily understood.

Appendix A

French Patent 1,427,001	*United States Patent 3,382,656*
In the drawing, there is shown an embodiment with a tube having a 3-lobe section, like a clover leaf. Such a tube can be obtained by passage of a larger tube in a suitable die, deforming the tube.	In FIGURE 1, there is illustrated an embodiment comprising a tube having a three-lobe or "clover leaf" cross-section. Such a tube may be obtained by passing a larger tube through an appropriate die by which the tube is deformed.
The tube of the example, shown in section, comprises 3 channels 1, 2, 3, connected by diaphragms 4, 5, 6, created upon deformation of the initial tube. These diaphragms can be closed by complete locking of the opposite partitions, as in the section shown, but it is not obligatory.	In FIGURE 1, the tube of the example, which is illustrated in section, comprises three channels 1, 2 and 3 connected by diaphragms 4, 5 and 6 created in the deformation of the initial tube. These diaphragms may be closed by complete clamping of the opposed partitions, but this is not essential. *Each of the plurality of lobes or tubes may, of course, constitute separate tubes that are interconnected by a good heat conducting means, such as copper or alloy, or equivalent heat conducting metal means.*
Channel 1 contains a thermal probe connected to control and regulation apparatus making it possible to check the temperature of channel 1 at each moment and to keep it in narrow predetermined limits.	The channel 1 contains a temperature probe connected to monitoring and adjusting devices for checking the temperature of the channel 7 at each instant and maintaining it between predetermined narrow limits.
Channels 2 and 3 contain yarns 8 and 9, undergoing heating.	The channels 2 and 3 contain filaments 8 and 9 which undergo the heating.

Appendix A

French Patent 1,427,001	*United States Patent 3,382,656*
In direct heating by resistance of the tube the temperature is the same everywhere, except for losses by radiation, which can differ slightly, by the three channels, if the thermal insulation is not absolutely uniform.	In the direct resistance heating of the tube, the temperature is the same throughout, subject to losses by radiation, which may differ slightly in the same channels, if the thermal insulation is not absolutely uniform.
	Referring to FIGURE 2 *of the drawing, the filaments 10 and 10' pass from the cones 11 and 11' through guide means 12 and 12' and then through parallel lobes 13 and 13', which in the form shown is curved so that the filaments contact the surfaces of the tubes as they are fed therethrough. In some instances, however, the tubes may be made straight instead of curved and the filaments be caused to contact the sides of the tubes by suitable guide means. The heating tubes that comprise lobes 13 and 13' are connected to tube 14 through heat transfer means 16 with terminals 15 which are connected to a suitable source of electric current for heating the tubes by resistance effect. Lobes 13 and 13' are preferably interconnected by a heat transfer means that is preferably made of the same metal as the lobes, so as to have the same resistance, and is preferably made from a metal known for its high*

French Patent 1,427,001	*United States Patent 3,382,656*

resistance properties, for example, of nickel chrome alloy or metals or alloys of a lower resistance. The applied current is preferably low. The heater tubes 13 and 13′ are interconnected by heat transfer means 16. The tubes may be thermally insulated at least in the areas where the tubes are not connected by enclosing them in a larger tube 17 and 17′ which are cut away to allow the heat transfer means 16 to be joined to the heater tubes, and are lined by an insulating material, for example, vermiculite which fills the space between the inner wall of the large tubes and surfaces of the heater tubes or resistor tubes 13 and 13′. The ends of the large tube 17 are closed by disc 18 and 18′, for example, by a plastic material with an orifice the size of the diameter of tube 13 and 13′.

The filaments after passing through the tubes 13 and 13′ are fed through false twist spindles 9 and 18′ which are rotated by simple means indicated as a belt 20 and is adapted to produce a twist in the filament which feeds back on the filament towards the heating tubes 13 and 13′ until arrested by contact with the fila-

Appendix A

French Patent 1,427,001	*United States Patent 3,382,656*
	ments with the surfaces of such tubes. The temperature of the tubes 13 and 13' is adapted to heat the filaments for setting the false twist. Finally, the filaments 10 and 10' pass through a guide 21 and 21' and are then wound onto spools 22 and 22'. Therefore, by means of this invention at least two yarns and actually many more may be advanced through adjacent parallel lobes of a single tube, or through adjacent individual tubes that are interconnected by a suitable heat transfer means with a means located in an adjacent tube that is also connected by heat transfer means to each of the said other lobes or tubes for measuring and controlling temperature throughout the heater tube system.
(The invention can further comprise the following elements separately or in any combinations: a. The tubes can be heated by any means; b. Direct or indirect electric heating is used; c. The tubes can be straight or curved; d. Particularly, use is made of a curved tube, with direct heating by resistance with a 3-lobe sec-	The invention may comprise in addition the following elements singly or in any combination: (a) The tubes may be heated by any means. (b) Direct or indirect electric heating is employed. (c) The tubes may be straight or bent. (d) There is employed notably a bent tube directly heated by resistance and having a cross-section comprising three lobes, with

French Patent 1,427,001

tion, with or without intermediate partitions. [*This section contained as paragraph two of Claim 1, in French Patent 1,427,001.*])

CLAIMS

1. Improvement in false twist frames for texturizing of synthetic yarns and remarkable in that the frames comprise heating of tubes with several lobes, forming multiple parallel channels one of which contains a thermal probe, connected to control and regulating apparatus, whereas the others serve for the passage of the yarns to be heated individually for setting of the false twist applied by individual spindles upstream from the tubes.

The invention can further comprise the following elements separately or in any combinations:

a. The tubes can be heated by any means;

United States Patent 3,382,656

optionally partitioned intermediate diaphragms.

Each of the individual yarns that are processed by the method and apparatus of this invention may be false twisted by individual spindles or by a single spindle that twists a number of yarns. In the second case, a special yarn guide means is needed so that the plurality of yarns are properly fed into the false-twist spindle.

Having thus described the invention, what is claimed is:

1. In a false-twist apparatus for the crimping of a textile yarn including delivery means for advancing the yarn from supply to takeup and between said delivery means, twisting means and heat setting twist within the yarn, respectively the improvement comprising a heating tube having at least three lobes forming multiple parallel channels, each connected by a heat transfer diaphragm, one of said lobes containing a temperature probe, and at least two other of said lobes serving as passageways for individual filaments, resistance elec-

Appendix A

French Patent 1,427,001	*United States Patent 3,382,656*
b. Direct or indirect electric heating is used;	trical heating means for heating filaments disposed within said lobes, whereby the filaments are individually heated for setting the false twist applied by an individual spindle downstream of the tube.
c. The tubes can be straight or curved;	
d. Particularly, use is made of a curved tube, with direct heating by resistance with a 3-lobe section, with or without intermediate partitions.	
2. False twist frames for texturizing of synthetic yarns and with productivity multiplied by the fact of the simultaneous passage of several yarns in heating tubes, subdivided into twin individual channels.	2. The apparatus of claim 1 wherein the heater tube is arcuate in shape.
	3. The apparatus of claim 1 further characterized in that the tube is straight.
	4. The apparatus of claim 1 wherein the heater tube is comprised of at least four lobes.

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824,942 12/1959 Great Britain

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

SPARTANBURG DIVISION

CONSOLIDATED CIVIL ACTION No. 71-306

THE DUPLAN CORPORATION,

Plaintiff,

v.

DEERING MILLIKEN, INC., DEERING MILLIKEN RESEARCH CORPORATION, MOULINAGE et RETORDERIE de CHAVANOZ, ATELIERS, ROANNAIS de CONSTRUCTIONS TEXTILES, and ARCT, INC.,

Defendants.

Filed

Feb. 21, 1973

Miller C. Foster, Jr., Clerk

On January 25, 1973, the defendant (Deering Milliken Research Corporation) filed motions for further findings, and amendment of the court's previous finding of summary judgment of invalidity of U.S. Patents 3,137,119 and No. 3,382,656, based on the invalidity exclusion set forth in 35 U.S.C. Section 102(d).[1] The Order referred to was pub-

1. 35 U.S.C. §102(d) provides: Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless—

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States.

lished January 2, 1973, and the Clerk entered judgment January 16, 1973, in which the two patents were declared invalid for reasons fully stated in the written Order. To support their motions, defendants filed an affidavit of Henri Crouzet, dated January 22, 1973, in which he made certain averments as to ownership, disclosures, et cetera, as to the French patents involved, and made a solemn declaration that American Patent No. 3,382,656, and French Patent No. 1,427,001 were not the same invention. The court has fully considered this affidavit, and fully considered the arguments of eloquent counsel for the defendants. Also examined are the various authorities cited by movants, and their opponents.

Argument on the motion was heard by this court, in the Rock Hill Division, on December 19, 1972, as to the original motion and on February 13, 1973, as to the later motion to amend the findings. In effect, the later arguments reiterated the arguments previously pursued. Initially, movants asked the court to read into subsection 102(d) some of the language of subsections of 35 U.S.C. 102(a) and (b). Counsel insisted that the meaning of Congress was to include in subsection (d), the words in subsection (a), and "described in a printed publication" which is also contained in 35 U.S.C. 102(b). Such language is not in subsection (d), and this court has neither the right, authority, nor precedent, to read into subsection (d) language which the Congress did not include. The court is of the opinion that if the Congress had meant to include such language in 35 U.S.C. 102(d) it would have been included in express language; there is no inference that Congress omitted the language for any other reason than by design.

Counsel for the movant also insisted that the court read into the statute a provision that the invention should be made "available" to the public. Subsection (d) has no such language, and no such requirement of availability.

This subsection simply says that the invention processed in the foreign country "was first patented or caused to be patented by the applicant or his legal representative or his assigns in a foreign country." Contemplation of such language returns us to the real issue before the court on this motion, and the previous motion, when considering patents.[2] In considering 35 U.S.C. Section 102(d), it must be realized that we are dealing with two patents, one an American patent, and the other a foreign patent. The courts have recognized this for almost a hundred years, and this court recognizes the fact that the Congress never intended to place on the foreign patentee the necessity of complying with American patent laws before this country would recognize the invention as patented by the foreign country. To do so would be an attempt to dictate to the foreign country as to the procedures to be employed in procuring the right to the monopoly, the patent, in that foreign country. Every country has the privilege and duty of prescribing its patent laws. No other country has a right to dictate those processes.

2. December 19th hearing (page 39 of the transcript) Mr. Greenfield argued:

> "The defense of invalidity under Section 4887, specifically 102(d) puts a heavy burden on the defendant. Now, as to key dates there is no dispute. The invention was applied for in France in both cases more than a year before it was applied for in the United States, but the area where we join issue primarily, and I also believe is dealt with; and the argument is dealt with almost entirely is the meaning of the word 'patented.' That is essentially a question of law and I agree with my friends on the other side. We are not—I am not asking your Honor to choose between the delivery date and the approval date. Our argument is somewhat different. Our argument is the argument that the courts have made for more than a century and the Congress has adopted that patented in American law requires two elements. It requires issuance of the patent, and it requires it be made available to the public. It is as true under 102(a). It is as true under 102(b), and it has been expressly held to be true under 102(d)."

Movants cite the case of *Schoerken* v. *The Swift and Courtney and Beacher Co.* (S.D. N.Y. 1881), 7 F. 469, which the court held "the expression patented" in the statute, would seem, from signification of the word, to mean only inventions laid open to the public and protected to the inventors (as distinguished from secret patents). The real issue in that case was whether or not a secret patent would have the same impact as a patent where the monopoly is granted. The patent was a French patent, and the issue is not identical as the issue before this court. Significantly, the opinion uses the word "protected to the inventors"; on the "delivre" date, in France, the invention is protected to the inventor.

Movants also cite *Merrell-Soule Company* v. *Powdered Milk Company* (W.D. N.Y. 1914), 215 F. 922, where the court, in a similar decision, was treating with a German patent. In the opinion we find these words:

> • • • A patentee under the German law secures a certain monopoly rights during the pendency of the application, but • • • full and definite monopoly rights are not secured to him until after the Patent Office decision, when there is a *sealing* or *issuing* of the patent [emphasis added], which is evidenced by the ausgegeben date printed on the face of the patent.
>
> The word "patented" as used in both sections when considered in relation to the issuance of the patent or the period from which the monopoly dates, has no different signification. Upon this point there was evidence by the complainant to show that it is the practice of the United States Patent Office to regard the ausbegegan date of a German patent as the date of the grant, the time from which monopoly runs.

This opinion of the court of the Western District of New York was affirmed by the United States Court of Appeals for the Second United States Circuit (1915), 222 F. 911. That opinion quoted from the case of *Telephone Company* v. *Cushman,* 57 F. 842 (N.D. Ill. 1893), in which the judge said:

> It seems to me clear that the meaning of our own statute is to limit the term of the monopoly so that it shall not exist longer than a previously granted monopoly abroad.
>
> The term "patented" as used in our statutes, does not mean the preliminary proceedings, but the actual issuance of the government speaking the exercise of sovereign will, *investing the patentee with the grant of a monopoly* (emphasis added) [57 F. 845].

It therefore appears to the court that the previous ruling of this court as to the delivre date, which is the key to the decision of the issues here, need not be changed. The question is purely a question of law, and while the "publication date" of a patent may be the significant effective date when using a foreign patent as prior art to invalidate a U. S. Patent, or by someone other than the patentee of the foreign patent (35 U.S.C. 102(a) and 102(b)), the same considerations have no applicability to the situation where the U. S. Patent is being considered under 35 U.S.C. 102(d), and in which it is contemplated that the U. S. patentee's own foreign patent may invalidate the U. S. Patent. Section 102(d) applies to a state of fact where the patentee's manner and procedure of patenting the same invention in a foreign country causes the invalidity of the United States Patent. This is significantly pointed out by the U.S. Patent Office Board of Appeals in *Ex parte Weiss,* 159 U.S. Patent Quarterly 122 (December 18, 1967):

The second question raised by appellant relates to a peculiarity in the German design law (which also exists in the design laws of some other countries). In the normal registration the design deposits are open and available to the public, but the applicant for the registration may, at his own option, deposit the design in a sealed package and have it kept secret. When this is the case the contents are not open to public inspection until after the expiration of the design registration. The design registration involved in the present case was one of these secret registrations. Appellant argues that in accordance with the principle of In re Ekenstam, 45 CCPA 1022, 256 F.2d 321, 734 O.G. 290, 118 USPQ 349, and also citing the early case of Brooks et al. v. Norcross et al., 2 Fish. Pat. Case 661, Fed. Case 1,957 (Mass. 1851), and others, a secret patent cannot be used against an applicant. According to this line of cases a foreign patent which is secret, in that the specification is withheld from public inspection, cannot be used as prior art against applicants for patents or patentees. There are several differences in the situation presented here. In the Ekenstam case, for example, the secrecy was a statutory requirement imposed on the Patent Office independently of any action by an applicant. In the present case the secrecy is one which appellant himself, or his assignee, optionally assumed, and, more importantly, *the decisions referred to all dealt with the use of the secret disclosures as prior art against another, which is not the situation here.*

The identical question involved here arose in an early case, relating to mechanical patents, Gramme Electrical Co. v. Arnoux and Hochhausen Electric Co. et al., 17 F. 838, 1883 C.D. 418, 25 O.G. 193 (N.Y. 1883). The patentee of the United States patent in suit had

obtained a prior patent in Austria and the question arose under the predecessor of 35 U.S.C. 102(d) with respect to the invention having been previously patented in a foreign country. According to the Austrian law of 1852, under which the foreign patent had been obtained, the applicant at the time of applying could request that the specification be kept secret and when this was done the specification was kept secret until the expiration of the patent. *The patentee argued that since the foreign patent was secret it could not be used. The court, however, refused to accept the argument, while recognizing that the Austrian patent fell short of being sufficient to defeat a patent granted to another for an invention made after it was granted, and held that the question of the secrecy or publicity of the foreign patent had nothing to do with the applicability of the particular section of the statute.* [Emphasis added.]

It is obvious that publicity of the foreign patent is not a requisite of the exclusion effected by 35 U.S.C. 102(d). It is also obvious that *monopoly* is a requisite. Monopoly exists here from the time of the "delivre" date of the French patent involved. 35 U.S.C. 102(d) is therefore applicable.

Finally, the movant takes the position that the inventions are not the same. The court has previously treated this in its Order of January 2, 1973, and finds no justification to change the ruling there made.

The motion is denied.

The court having determined that there is no just reason for delaying the entry of the final judgment on the previous ruling, it is ordered and directed that the two American patents, Nos. 3,382,656, and 3,137,119 are invalid, that

DMRC's actions for infringement of these patents is dismissed, and the Clerk should enter judgment immediately.

In keeping with the direction of this court, by statute and 28 U.S.C. 1292(b), this court states its opinion that the Order hereinabove referred to involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate determination of the litigation.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL
United States District Judge

Greenville, South Carolina

February 20, 1973.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-1357

THE DUPLAN CORPORATION, et al,
Appellees,

versus

DEERING MILLIKEN RESEARCH CORPORATION,
Appellant.

Filed
Nov. 1—1973
William K. Slate, II
Clerk

Appeal from the United States District Court for the District of South Carolina, at Spartanburg, Robert W. Hemphill, District Judge.

ORDER DENYING REHEARING

Upon consideration of the petition for rehearing and of the suggestion for a rehearing in banc,

Now, therefore, with the concurrence and approval of Judge Bryan and Judge Widener, and in the absence of a request for a poll of the entire court as provided by Appellate Rule 35(b),

IT IS ORDERED and ADJUDGED, that the petition for rehearing is denied.

John A. Field, Jr.
United States Circuit Judge

35 U.S.C. §102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1164

DEERING MILLIKEN RESEARCH CORPORATION, *Petitioner*

v.

THE DUPLAN CORPORATION, ET AL., *Respondents*

RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1164

DEERING MILLIKEN RESEARCH CORPORATION, *Petitioner*

v.

THE DUPLAN CORPORATION, ET AL., *Respondents*

RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

The respondents, seventeen parties to the consolidated actions below (hereinafter collectively referred to as "Throwsters"), submit that the Petition for Writ of Certiorari should be denied.

The decisions of the lower courts present no "new" interpretation of the statute (35 USC 102(d)) involved; no change in the established law; no conflict between various circuits; and no threat to the proper

administration of the United States patent system. There are, therefore, no special or important reasons for this Court to review these decisions on certiorari.

QUESTION PRESENTED

The sole "question presented" by petitioner (hereinafter "DMRC") is fictitious, misleading and finds no foundation in either the record facts or the conclusions of law drawn by the two courts below. The "question" can be accurately stated as follows:

> Did the courts below err in holding that, when an applicant for United States patent has been vested with his full exclusive right under French patent law by official decree, his invention has been "patented or caused to be patented" in France within the meaning of 35 USC Section 102(d)?

STATUTE INVOLVED

The statute upon which both the district court and the court of appeals predicated their decisions is 35 USC Section 102(d) which read as follows:

> "A person shall be entitled to a patent unless—
> (d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States,"

This section is concerned with acts of the patent applicant and imposes a definite time limit for filing in the U. S., where the invention was previously patented abroad *by the same applicant* under the conditions specified. This is the only portion of section 102

which refers to prior patenting of the same invention by the same inventor.[1]

STATEMENT OF THE CASE[2]

The question and statement of facts, as framed by petitioner, suggest that petitioner is merely the innocent victim of an unexpected and novel interpretation of the applicable statute by the courts below. Nothing could be further from the truth.

Petitioner deliberately delayed the filing of the U. S. patent application, contrary to the intent of the statute. The oath accompanying the U.S. application was falsified and the Patent Office was thereby prevented from discovering the invalidating violation. Issuance and publication of the French patent were *purposefully* delayed at the patentee's *request*. The construction that the district court and the court of appeals applied to section 102(d) was not new or different. It was in fact the very same construction uniformly given to this provision and its predecessors by the Patent Office *and* the Federal Courts continuously from at least 1880 up until the present date.

Briefly stated, the courts below held that the same inventions, as claimed in two United States patents,

---

[1] Petitioner, however, seeks to confuse the clear meaning and purpose of section 102(d) with that of separate and independent sections 102(a) and 102(b). Petitioner thus urges that the word "patented" be considered apart from its respective contexts, in disregard of the separate and distinct Congressional purposes and policies which underlie those different sections.

[2] The primary arguments in the courts below centered around U.S. patent 3,282,656 (and its counter-part French patent 1,427,001), with the understanding that the same legal conclusions and result would be applicable to U.S. patent 3,137,119. The same format will be followed in this Court.

had been "first patented or caused to be patented" by the same applicant in France "prior to the date of the application for patent in this country on an application filed more than 12 months before the filing of the application in the United States".[3] The patents are therefore invalid by reason of 35 USC 102(d).

It was never disputed by the petitioner that:

1. Each of the corresponding French patents was granted on an application filed more than 12 months before the filing of the respective application in the United States; and

2. Each of the corresponding French patents was granted (*délivré*) by a decree of the French Minister to the French patentee prior to the filing of the respective application in the United States.

SUPPLEMENTAL STATEMENT OF FACTS

Petitioner's statement obscures the facts—crucial to application of section 102(d)—that the invalidated U. S. patents are for the *same* invention as corresponding French patents previously obtained for the *same* patentees, the Crouzets, by the *same* assignee, Chavanoz.

---

[3] As noted by the court of appeals (A2-3), the district court's decision was based upon unusual expertise. In extensive deposition proceedings, the district court had the opportunity to examine thousands of documents and to become thoroughly acquainted with the technical subject matter in question as well as the patent policies and procedures both in France and in the United States. The proceedings included examination of a French "Conseil en Brevets" (Mr. Laurent) who acted for the French parties, study of extensive affidavits relating to French patent procedure, the nature of a French patent, and the role of the French patent advisors. They also included special depositions taken in Paris, France, and a visit by the court to the French Patent Office.

Henri and Charles Crouzet, the named inventors of the respective United States patents in issue, are respectively the President and Director General of a French machinery manufacturing company, Ateliers Roannais de Constructions Textiles ("ARCT-France"). They assigned their inventions and applications to Moulinage et Retorderie de Chavanoz ("Chavanoz") retaining an exclusive license to manufacture and sell machines allegedly embodying the inventions.

Leo Soep was a French patent advisor, "Conseil en Brevets d'Invention", who acted from time to time for Chavanoz and for ARCT-France.

Petitioner DMRC obtained from Chavanoz merely the limited right to license the use of the inventions in the United States. Chavanoz, the owner of the patents, is a party to the proceedings in the district court, and is bound by the decision entered therein, but Chavanoz did not appeal from the judgment holding its patents invalid.

Chavanoz & DMRC Deliberately Delayed Filing the Applications in the United States

The documented origin of U.S. Patent No. 3,382,656 begins with the filing of the corresponding application in France on November 13, 1964 [Exhibit 957, B11].[4] On the 16th of November, 1964, Mr. Leo Soep wrote Mr. Crouzet advising him of the filing and enclosing a copy of the text as filed. [Exhibit 957A, B27].

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[4] Pages preceded by "B" are to Respondents' Supplemental Appendix, bound herewith. Pages preceded by "A" are to Petitioner's Appendix.

On December 8, 1964, Mr. Soep wrote to DMRC enclosing a translation of the French application and specifically requesting that DMRC postpone the filing of the corresponding United States application until the end of the priority period. [Exhibit 952, B29]. DMRC acknowledged this request and recognized the need to file in the United States prior to November 13, 1965 [Exhibit 953, B30]. However, the United States application was not filed until January 3, 1966, and its oath made no mention of the earlier filed corresponding French application. No documentation, excuse or reason has been produced for the deliberate delay in filing the United States application until after the grant of the corresponding French Patent No. 1,427,001 on December 27, 1965, or for the failure of DMRC-Chavanoz to reveal the existence of the French application to the United States Patent Office.

On the French "Délivré" Date Chavanoz Had Its Exclusive Right and Monopoly

DMRC does not contest that under French law, the inventor-patentee acquired all of the rights conferred by a patent on the *"délivré"* date.[5] On that date, the

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[5] DMRC's attempt (Petition p. 5) to equate the French *"délivré"* with the United States "notice of allowance" is specious. A "notice of allowance" (35 USC 151) merely sets the time running for paying a fee; if not paid by the applicant within the time allowed, no patent will issue. Moreover, the "notice" confers no rights, liability by an infringer cannot accrue, no suits can be filed, and the notice of allowance can be subsequently withdrawn by the Patent Office (37 C.F.R. 1.313), and the patent refused.

In contrast, on the day of *"délivré,"* the French applicant receives the following statement from the French Patent Office:

> ". . . the patent you have applied for . . . *has just been issued to you,* as per decree under today's date . . ." (B24),

and thereby acquires his full right to sue and recover for infringement. (A14-15; A17).

French Ministry signed the decree of issuance cr grant of the patent, and the inventor-patentee thereafter could sell, trade, publish, enforce, sue for infringement, or otherwise do as he wished. [A14, 15]. The subsequent publication in no way enlarged or changed the exclusive rights which vested and were enforceable on the *"délivré"* date.

Chavanoz Was Not Required To Keep the French Patents Secret

Contrary to the assertion in DMRC's petition, there was no requirement that Chavanoz keep the contents of the French patents secret after the *"délivré"* date. Even prior to the *"délivré"* date, Chavanoz had the full right to use and disclose the invention (as it did in fact disclose to DMRC, B29) as well as the right to apply for corresponding patents in other countries. [Laurent Testimony, B2 to 10].

ARGUMENT

THE DECISIONS OF THE COURTS BELOW ARE CONSISTENT WITH THE STATUTORY CONSTRUCTION BY THE PATENT OFFICE AND WITH THE PRIOR RULINGS OF THE FEDERAL COURTS IN CASES ARISING UNDER SECTION 102(d) AND ITS PREDECESSORS; THERE IS NO CONFLICT

The decisions of the courts below, holding that under French procedure *" 'délivré'* is the operative patent date" for purposes of Section 102(d), are entirely correct and completely supported by:

1. The uniform unbroken practice and rulings of the U.S. Patent Office, interpreting subsection 102(d);

2. A long and unbroken line of Federal Court decisions applying and interpreting section 102(d) and its predecessor statutes; and

3. The Congressional intent and policy which is embodied in subsection 102(d), which policy has been repeatedly held to be different from the policy embodied in subsections 102(a) and (b).

DMRC's sole line of argument is that the word "patented" must be narrowly construed, without regard to context or purpose, to always include "availability to the public". DMRC has thus ignored the fundamental aspect of a patent with which 102(d) is concerned—the exclusive monopoly granted to the patentee. Section 102(d) is concerned with the patent applicant, his acts and with limitations on his right to a monopoly in the United States when he has previously obtained a monopoly in a foreign country. "Availability to the public" is not and never has been a concern of section 102(d).

The Interpretation of Section 102(d) by the Patent Office, and by Patent Office Appellate Rulings, Have Uniformly Rejected "Publication" as a Requirement of Section 102(d).

The "Manual of Patent Examining Procedure" (hereinafter "MPEP") states the official policy and practice of the Patent Office in the treatment and examination of applications for United States patents.

Section 706.03(s) of the MPEP, entitled "Statutory Bar" succinctly states the Patent Office's established interpretation and the conditions which, if met, establish a "bar" under section 102(d), [B1] The condition which is pertinent to the issue here, that of when the invention is patented abroad, is explained in the MPEP in the following paragraph:

> "(3) The foreign patent must be actually granted (e.g., by sealing of the papers in Great Britain) before the filing in the United States or, since

> foreign procedures differ, the act from which it can be said that the invention was patented, has occurred. It need not be published. *Ex parte Gruschwitz et al,* 138 USPQ 505 discusses the meaning of 'patented' as applied to German procedures."

The decision of *Ex parte Gruschwitz,* cited in the MPEP, *supra,* is reported only at 138 USPQ 505 (Patent Office Board of Appeals, 1961). That decision was specifically concerned with the date on which a German patent should be considered "patented" for purposes of 102(d). The rationale employed by the Board directly contradicts the arguments presented by DMRC. The Board stated:

> ". . . [A]ppellants do not and cannot deny that the patent rights were legally in existence, were vested to the fullest extent that patent rights become vested in Germany, and were enforceable, at the time. The position taken is essentially that a later date, namely April 11, 1958, when the specification of the patent, identified as such, was issued in printed form, should be taken as the date the invention was patented in Germany. This position cannot be accepted. It is elementary and requires no citation of authority that the mere issuance of the specification of a patent in printed form is unessential to the question of whether an invention has been patented in a foreign country." (138 USPQ at 506)

Of even more direct application is the rule stated by the Board in *Gruschwitz* with respect to determining the date on which a French invention is "patented" in section 102(d):

> "In the case of France, a patent is granted (délivré) by the execution of a departmental order (or ministerial decree) which remains in

> the file, and the patentee notified of the fact. Some time later, about three months or so, the specification is issued in printed form. After that, in due course, the patentee is sent a patent document which consists of a certified copy of the granting order or decree with an attached copy of the specification. The practice of the U.S. Patent Office is and has been to consider the date the patent was granted (the 'délivré' date) as the date the patent was granted for the purpose of section 102, . . .". (138 USPQ at 510)

To the same effect, although again dealing with a German patent, is the decision of *Ex parte Weiss,* 159 USPQ 122 (Board of Appeals, 1967), which was extensively quoted in the Order of the district court, at A31 and A32. Most significantly, *Weiss* expressly considered *Brooks* v. *Norcross,* 4 F.Cas. 294, and *In re Ekenstam,* 256 F.2d. 321, two of the cases relied upon by DMRC, and held that those cases were not applicable to section 102(d).

In *Ex parte Einfalt,* 67 C.D. 59, 155 USPQ 529 (Board of Appeals, 1966) the argument that there must be both a grant by the foreign authorities and availability to the public to be "patented" within the meaning of 35 USC 102(d) was specifically rejected. The Board stated its reasons at page 530 of that opinion:

> "It appears to us that where appellant has full knowledge of the content of the design registration which was acknowledged for purposes of his benefit, he cannot be heard to complain . . . Decisions dealing with the meaning of 'patented' in connection with establishing bars against persons not party to the foreign filed document do not appear to us to be controlling on the present case."

From these cases which do deal with section 102(d), it is manifestly clear that the Patent Office itself, which is charged by Congress with the duty to in-

terpret the patent statutes in the first instance, has consistently followed the rule that an invention has been "patented" in a foreign country at the time when

> ". . . the patent rights were legally in existence, were vested to the fullest extent that patent rights become vested in [the foreign country] and were enforceable . . ." (*Ex parte Gruschwitz, supra,* at page 506).

The only Patent Office decision cited by DMRC in support of its contrary contention is *Ex parte Rackham,* 306 O.G. 243 (1922). The *Rackham* decision was thoroughly distinguished by the Board in *Ex parte Weiss* on the fundamental ground that, in *Rackham,* the British patentee had *not* received his "exclusive privilege", and due to wartime secrecy conditions,

> ". . . the inventor or patentee himself was even forbidden from applying for a patent elsewhere or revealing the invention without special permission, and no infringement suits could be brought with respect to infringement before the secrecy was removed." (at 125 of 159 USPQ)

Ex parte Rackham, therefore, has no applicability to the present state of facts. Here, there is no contention that Chavanoz was under any duty to keep its invention secret or that infringement suits could not have been brought by the French patentee on the *délivré* date. Indeed, the district court expressly found that the French patentee had been granted and could enforce his "exclusive privilege" from the *délivré* date (A 17).

Decisions of the Federal Courts Uniformly Hold That It Is Receipt of the "Exclusive Privilege", Rather Than "Availability to the Public", That Determines When an Invention Is "Patented" Under Section 102(d) and Its Predecessors.

Decisions of the Federal Courts which have interpreted and applied section 102(d) and its predecessors are completely consistent with the Patent Office's interpretations considered in the previous section, and are also consistent with the opinion of the courts below.

In *In re Talbott,* 443 F.2d 1397 (CCPA 1971) the Court of Customs and Patent Appeals flatly rejected the contention that "availability to the public"—required under Section 102(a) and (b)—should also be read by implication into the requirements of Section 102(d). In so doing, the court specifically approved and confirmed the Patent Office's decisions in *Ex parte Weiss* and *Ex parte Einfalt, supra.*

The *Talbott* decision deals with, and disposes of, the very same argument now made by DMRC in the following passage:

> "As to his second point of contention, appellant strongly argues that an affirmance of the Board's decision here would . . . require a holding absolutely contrary to the logical premise 'that in law, carefully drafted, certain terms—such as the term 'patented'—must have the same meaning, particularly since neither the law nor its legislative history contains any statement to the contrary.' To this we can only reply that, while appellant's premise is desirable in the ideal, it is impractical in applying statutory provisions to cover circumstances which are very real but vastly different. The policy considerations underlying parts (b) and (d) of section 102, while overlapping to some extent, are not necessarily identical. As the Patent Offce has pointed out, considerations in the nature of those which obviously governed our decision in Ekenstam [a 102(a) and (b) case],

> *supra,* have no application here." (443 F.2d at 1399).

The court thus held:

> "We agree with the Board that 'it is sufficient if the inventor receives from the foreign country the exclusive privilege that its laws provide for.'" (443 F.2d at 1399).

DMRC attempts to distinguish *Talbott* as well as *Weiss* on the ground that the German patents therein were kept secret only at the direction of the patentee, whereas the patents here in issue were not made public by requirement of French law. The decisions in *Talbott* and *Weiss* expressly do not rest on this narrow ground.

In any event, petitioner's alleged distinction, that here the French specifications were withheld from the public "by the impartial operation of [French] law" and not ". . . by the voluntary choice of the patent applicant . . . ." (Petition, p. 11), is *demonstrably untrue.*

The French patents (e.g., for No. 1,427,001, see B11) show on their face [6] that granting and hence publication was postponed at the express request of Chavanoz. But for this delay, the patents undoubtedly would have been

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[6] By the phrase:

"Brevet d'invention dont la délivrance a été ajournée en exécution de l'article 11, § 7, de la loi du 5 juillet 1844 modifée par la loi du 7 avril 1902."

Translated:

"Patent of invention the granting of which has been postponed pursuant to article 11, paragraph 7 of the law of July 5, 1844 as amended by the law of April 7, 1902."

Article 11 of the French patent law (the law of April 7, 1902) is reprinted at appendix, page B19, together with an English translation. The provision for postponement of "délivrance" at the *request* of the applicant was also adverted to by the district court in its Opinion, at A12.

published, as well as granted, prior to the U.S. filing date. The request for postponement was made in the French application as follows:

> "The applicant requests:
>
> (a) the postponement to one year of the granting of its patent;" (Literal translation [7])

While this delay was, of course, authorized by article 11, section 7, of the French patent law then in force, the delay in publication came about, not by the "impartial" operation of French law, but, just as in *Talbott* and *Weiss,* by the patentee's *express request.*

The distinctions between section 102(d) and sections 102(a) and (b), so clearly explained by *Talbott, supra,* are not "new", but on the contrary are well-rooted and recognized in prior decisions.

In sections 102(a) and (b) the term patented is used in context with the words "or described in a printed publication". The emphasis in these two sections is on knowledge available to the public. Knowledge or availability to the public was also the primary concern of their predecessor statute, R.S. 4886. [8]

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[7] French text at B18:

"Le deposant revendique(') :

(a) l'ajournement à un an de la délivrance de son brevet;"

[8] R.S. 4886: Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon the payment of the fees required by law, and other due proceedings had, obtain a patent therefor. [See prior patent statutes: Section 24, 1870; Sections 6 & 7, 1836; Section 1, 1800; Section 1, 1793.]

The word patented is used in section 102(d) in a different context. No reference is made to "known" or "described" or to a "publication". Clearly this section is concerned with the other aspect of a patent—the exclusive monopoly granted to the applicant. It is concerned only with what the applicant has patented, i.e., what exclusive monopoly rights the applicant has obtained in a foreign country. Its predecessor statute, R.S. 4887,[9] was likewise primarily concerned with the monopoly granted to the applicant.

In the early decision of *De Florez et al* v. *Raynolds et al*, 8 Fed. 434 (C.C.S.D.N.Y. 1880), dealing with the immediate predecessor to R.S. 4887, the court held:

> "We fix the date of November 27, 1862, and not the date of February 20, 1863, because we regard it as the clear intention of the provisions of law limiting the duration of a United States patent, patenting an invention previously patented abroad to the same inventor, to give to the patentee a specified term from the date at which his foreign patent had effect as a foreign patent in his favor." (8 Fed. at page 445)

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[9] R.S. 4887: No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years. [See prior patent statutes: Section 25, 1870; Section 6, 1839; Section 8, 1836.]

The court specifically rejected the contention that the foreign invention must be "accessible to the public" before it could be deemed patented under the statute:

> "This view [in respect to the predecessors of 102(d)] is not necessarily applicable to a case where a foreign patent to one inventor is set up to defeat a United States patent to a different inventor. In such case the manifest intention of the law is that the foreign patent shall apply only as of a date when the invention was published or was accessible to the public, and not as of an earlier date, from which the inventor may have enjoyed the benefit of the foreign patent as a patent. The language of section 16 of the act of 1861, in saying that the 17 years is to run from 'the date of issue,' is a marked departure from the expression, 'date or publication' of the foreign patent, in section 6 of the act of 1839; and in reading the two sections together, full effect must be given to the new expression." (at page 445)

This definitive and clear interpretation established in the *De Florez* case was followed in *Gramme Electric Company* v. *Arnoux & Hochhausen Electric Co.*, 17 Fed. 838 (C.C.S.D.N.Y. 1883), where an Austrian patent was involved. In an effort to avoid the statutory bar, the American patentee contended, like DMRC here, that the description of his corresponding Austrian patent had been kept secret and was not open to the public. Rejecting this contention, the court stated that:

> ". . . however far the Austrian patent might have come short of being a prior public foreign patent sufficient to defeat a patent granted here to another inventor for an invention made after the granting of such prior foreign patent, it is not perceived

> how the question of secrecy or publicity in the foreign patent, granted prior to the granting of the patent here, can affect, under [the predecessor to 102(d)], the question . . . here. The Austrian patent conferred on the patentees an exclusive privilege." (17 Fed. at p. 841)

In *Atlas Glass Co.* v. *Simonds Mfg. Co.*, 102 Fed. 643 (3rd Cir. 1900), the Third Circuit also recognized that "availability to the public" was not required under the predecessor statutes to Section 102(d). The court emphasized that "patented" as used in R.S. 4887 had come to mean "*the exclusive privilege* granted by sovereign authority." The court's discussion, construing the word "patented," and distinguishing it from "open letters" (102 Fed. at 646), makes it abundantly clear that "availability to the public" was not a relevant consideration. The court of appeals held:

> ". . . The true meaning and purpose of the act of congress as expressed in the language used, are accomplished by applying the word 'patented' to having *received the grant of an exclusive privilege* from a foreign sovereign, if such privilege amounts to a substantial monopoly." (102 Fed. at p. 646). (Emphasis added)

The cases decided under the present statute, 35 USC 102(d), all echo the same fundamental principle that an invention is "patented in a foreign country" on the date that the foreign patentee receives whatever exclusive privilege is accorded by the laws of that country, and that it is irrelevant whether or not the disclosure of his patent is made public at that time. See *In re Talbott, supra; G. B. Lewis Co.* v. *Gould Products, Inc.*, 297 F.Supp. 690, 697 (E.D.N.Y., 1968),

aff'd. 436 F.2d 1176 (2nd Cir. 1971); *Ritter* v. *Rohm & Haas Co.*, 271 F.Supp. 313, 317 (S.D.N.Y. 1967).

The only federal court decision cited by the petitioner for the proposition that the word "patented" in section 102(d) has the same meaning as in sections 102(a) and (b) is *American Infra-Red Radiant Co.* v. *Lambert Industries, Inc.*, 360 F.2d 977 (8th Cir. 1966). That case contains *no* such suggestion. Indeed, contrary to the petitioner's contention that the word "patented" can have only one narrow meaning, the court in *American Infra-Red Radiant Co.* recognized:

> "The word 'patent' has *many* general connotations and nuances but must be considered in the context in which it is used by Congress in implementing the Constitutional grant of authority. . . . As used by Congress in the different sections dealing with the establishment of a patent system *we must apply the particular connotation, which is to a certain extent a word of art, that would make effective the Congressional intent.*" (at 993-994)

CONGRESSIONAL POLICY CONSIDERATIONS UNDERLYING SECTION 102(d) DIFFER FROM THOSE UNDERLYING 102(a) AND (b)

While petitioner attempts (p. 13) to blur and confuse the policy considerations underlying section 102 (d), it is indisputably clear that those considerations are significantly different from the policy considerations underlying sections 102(a) and (b). In short, sections (a) and (b) look to prior disclosure by anyone (usually someone other than the United States applicant), while section 102(d) is concerned only with exclusive rights *obtained by the applicant himself* in a foreign country prior to the filing of his United States application.

This basic difference in policy was recognized by this Court in *The Bate Refrigerating Co.* v. *Sulzberger,* 157 U.S. 1, 15 S.Ct. 508, 39 L.Ed. 601 (1895). There, Justice Harlan exhaustively reviewed the prior statutes, the Congressional hearings and legislative history, as well as Patent Office policies and interpretations leading up to the enactment of R.S. 4887, from which section 102(d) is derived.

This decision establishes that the phrase "first patented or caused to be patented by the applicant . . . in a foreign country" must mean those rights and monopoly privileges obtained by the applicant in the foreign country. Referring to R.S. 4887, Justice Harlan stated:

> "The revisers, the House Committee on Patents, and Congress, all had in view the *rights of the inventor* at the time when he was to receive or be debarred from receiving a patent for his invention . . ." (Emphasis added)

Justice Harlan also stated the Congressional concern underlying the time limitation in R.S. 4887, as follows:

> ". . . [I]t is to be remembered—at least it may be assumed that Congress was advised—that action by the Patent Office upon applications for patents was often unduly and purposely delayed by applicants until they could reap the full benefit of the monopoly obtained by them in foreign countries before taking out an American patent." (157 U.S. at page 44)

While the time limitation of 102(d) is now somewhat different, the underlying concern remains the same. Application of this statute is particularly appropriate here, where Chavanoz and DMRC purposely delayed

the filing of the United States applications in an attempt to extend for as long as possible the exclusive rights conferred by a United States patent. [B29, 30] It is exactly this kind of purposeful delay that section 102(d) and its predecessors was intended to limit.

Finally, it should be noted that the decision of the courts below, as well as the decisions relied upon herein, are supported by principles of equity and fairness. For purposes of sections 102(a) and (b), it is not unreasonable to require that the inventions of others be "available to the public" before charging a United States applicant with knowledge of them. On the other hand, for purposes of 102(d), it is not unfair or inequitable to charge a United States applicant with knowledge of the issuance of his own foreign patent and the vesting of the exclusive rights conferred thereby.

To engraft the additional requirement of "availability to the public" onto section 102(d), as petitioner now urges, would clearly be artificial, unrealistic and unnecessary and would do violence to the clear Congressional intent expressed in the statute.

The threat to "innumerable" United States patents foreseen by the petitioner (Petition, pp. 14-15) is nonexistent. The opinions below are clearly limited to section 102(d). Moreover, as demonstrated above, the opinions are in full accord with a long and unbroken line of decisions dating back to 1880. There is certainly no evidence that those decisions ever had the dire consequences suggested by the petitioner.

CONCLUSION

All authorities agree with the result reached in the decisions of the district court and the court of appeals.

The grant of an enforceable exclusive right is the cornerstone of all patent systems. When such grant occurs, the invention is "patented" within the context of 35 USC Section 102(d).

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

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APPELLEES' SUPPLEMENTAL APPENDIX

1. Excerpts from United States Patent Office "Manual of Patent Examining Procedure" (current issue)

706.03(s) Statutory Bar

Another category of rejections not based on the prior art finds a basis in some prior act of applicant, as a result of which the claim is denied him.

* * * * * * * * * *

OWN PRIOR FOREIGN PATENT

Extract from 35 U.S.C. 102. Conditions for patentability; novelty and loss of right to patent. A person shall be entitled to a patent unless—

* * * * * * * * * *

> (d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States.

The statute above quoted establishes four conditions which, if all are present, establish a bar against the granting of a patent in this country:

(1) The foreign application must be filed more than one year before the filing in the United States.

(2) It must be filed by the applicant, his legal representatives or assigns.

(3) The foreign patent must be actually granted (e.g., by sealing of the papers in Great Britain) before the filing in the United States or, since foreign procedures differ, the act from which it can be said that the invention was patented, has occurred. It need not be published.

Ex parte Gruschwitz et al., 138 USPQ 505 discusses the meaning of "patented" as applied to German procedures.

(4) The same invention must be involved.

If such a foreign patent is discovered by the examiner, the rejection is made under 35 U.S.C. 102(d) on the ground of *statutory bar.*

* * * * * * * * * *

2. Testimony of Michel Laurent, Citizen of France July 11, 1972 and July 14, 1972

(July 11, 1972)

THE COURT: All right, we're going to take Mr. Laurent. Does the gentleman speak English, Mr. Greenfield?

MR. GREENFIELD: He speaks English, Your Honor, but not fluently and I think we'd better—(interrupted)

THE COURT: Well, we will use the same method for his convenience.

CLERK: Do you solemnly swear that the testimony that you are about to give in this case is the truth, the whole truth and nothing but the truth, so help you God?

MR. LAURENT: I do.

DIRECT EXAMINATION BY MR. MANN:

MR. MANN: Mr. Laurent, would you please state your name, age, and present address.

MR. LAURENT: Michel Laurent. I am a French citizen and I am a resident of Lyon, France, and my home address is 31 Rue Boileau.

MR. MANN: What is your trade, business, or occupation at the present time?

MR. LAURENT: I am a conseil en brevets.

MR. MANN: And how long have you been so engaged, sir?

MR. LAURENT: I am engaged as a conseil en brevets since April 1, 1971.

MR. MANN: Are you independently employed?

MR. LAURENT: Yes, I am.

MR. MANN: And have been prior to April of 1971?

MR. LAURENT: Prior to 1971 I was an employee of Rhodiaceta.

MR. MANN: How long were you employed by Rhodiaceta?

MR. LAURENT: Since July 2, 1962.

* * * * * * * * * *

MR. MANN: Describe for us, if you will, the nature and the type of work which you did while employed by Rhodiaceta.

MR. LAURENT: In the period from 1962 to September, 1967, I was employed without interruption at the Patent Department of Rhodiaceta, and in the period from September, 1967, to April 1, 1971, at the Licensing Department of the company Rhodiaceta.

MR. MANN: Were you at any time employed by Chavanoz?

MR. LAURENT: No.

MR. MANN: Have you at any time been employed by a concern you refer to as ARCT?

MR. LAURENT: No.

MR. MANN: Were you in any way during your employment by Rhodiaceta associated with or work with Mr. Leo Soep?

MR. LAURENT: What do you mean by "associated or working with"?

MR. MANN: Did your relationship, your employment by Rhodiaceta, place you in a position where you worked with Mr. Soep?

MR. LAURENT: In connection with, yes.

MR. MANN: In connection with?

MR. LAURENT: Mr. Leo Soep, yes.

MR. MANN: What was the nature of the work which you performed with Mr. Soep?

MR. LAURENT: Mr. Soep was acting as consultant, as counsel for Chavanoz, and I was also acting as counsel for Chavanoz.

* * * * * * * * * *

(Resumed Direct Examination of Michel Laurent Citizen of France by Mr. Park, on July 14, 1972)

MR. PARK: * * * * Now, Mr. Laurent, the next question I ask, when I speak of the French patent law, I will be talking about the old French patent law which was in effect prior to 1968. Will you accept that?

MR. LAURENT: Sure.

MR. PARK: All right, sir. Now, will you very briefly tell us what the procedure was under the old French patent law for obtaining a patent?

MR. LAURENT: Before 1968 there was in force in France the system that had its inception in 1844 of the French patents under the so-called "without examination" system. Now, without going into a course of French patent practice, allow me to state to you very briefly the essential features of this system. The applicant filed a text followed by a resume and, if indicated, by a drawing. This text became automatically, except for a few cases, what later on issued as a patent, without any guaranty on the part of the government as to the novelty features contained therein. But it was understood by the law and defined by the pronouncements of the French courts that all that is described and set forth in the patent was covered by the patent.

MR. PARK: All right, sir, and there was no examination by the French Patent Office on the merits of the subject matter of the application, is that correct?

MR. LAURENT: That is correct.

MR. PARK: And the only requirement for a valid patent in France was that the subject matter be novel, is that correct?

MR. LAURENT: That is correct.

MR. PARK: After you file a patent application, what happened to it toward the issuance of the patent?

MR. LAURENT: The basic assumption is that the patent is prepared in its proper form. After examination, in order to determine that the invention set forth in the patent does not enter the field of national defense, your patent application was issued by way of a ministerial

decree according to which the French government acknowledges a certain ownership title as to the aspects, the features that the applicant has described in his application. A few weeks thereafter, say two to three months, the application of the patent was issued and made available for public inspection by printing it in abruge (sic), in other words, a summary version thereof, in the official gazette. A few months later the patent was published as a patent. Now, all of these practices did not apply with regard to special patents in the field of medicine and medication, and between the moment the application was published and the resume was published in the official gazette—since the moment of the filing of the application and the publication of the resume in the official gazette, there was a lapse of 15 to 18 months during which the content of that application was kept strictly secret.

MR. PARK: That was with regard to medical patents?

MR. LAURENT: Yes, because for pharmaceutical patents at that time we had a novelty examination.

MR. PARK: Now, I am going to direct my following question to non-medical related patents. In your answer you said that after the examination to see whether the patent application involved national defense or in any way affected national defense, it was issued by a decree, is that correct?

MR. LAURENT: That is correct, by a narrative.

MR. GREENFIELD: Your Honor, I think I now see the purpose of this examination and I'd like to object to it on this ground: An important legal issue in this case will be the question of United States law involving Section 102(d) of the United States Patent Act, and I will have to read part of that to explain the objection: "A person shall be entitled to a patent unless the invention was first patented or caused to be patented by the applicant or his legal representative or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than 12 months before the filing of the application in the United States." And the

key question of United States law is when the invention was patented in the foreign country.

THE COURT: Actually, it is when the application was made.

MR. GREENFIELD: Well, it involves both, but one of the questions which I am positive will be disputed here in this case is on what date it was patented in the foreign country because I don't think there are going to be any disputes of fact as to the date of application. That is a question of United States law and I don't think it is proper to examine this witness on it. At this point they are examining him as an expert on French law. They have no right to do so. He is not their expert witness and they are not paying him. He is an expert in this matter on our side and they have no right to ask him for his opinion on French or American law.

THE COURT: He is a conseil en brevets for the Republic of France, as I understand it.

MR. GREENFIELD: That doesn't give them the right to pick his brains as an expert on the stand. You just can't call another side's person and start asking him about his general technical knowledge. They filed 13 affidavits or so on the Soep motion. They have no end of—(Interrupted).

THE COURT: I don't know why they can't. I have allowed depositions of adversary experts every week.

MR. GREENFIELD: I didn't hear that.

THE COURT: I say, I have allowed depositions of adversary experts, lawyers, doctors, and what not, every week. What case do you have to say they can't examine him?

MR. GREENFIELD: At my fingertips, none, and maybe I am wrong, but it has always been my understanding that unless the other side puts their expert on, you just can't call him and start picking his brains.

THE COURT: You listen to 20 people who you say know something about a subject and the adversary can depose on the discovery rules of this court, every one of them, whether or not they are experts.

MR. GREENFIELD: I will abide by that ruling.

THE COURT: If you can show me anything to the contrary, I'd like to know, because I've been making a lot of mistakes.

MR. GREENFIELD: I've made a few myself, but I think it is certainly improper to ask him a question about United States law, under Section 102(d).

THE COURT: I thought he was asking the gentleman about the French procedure.

MR. GREENFIELD: And this has nothing to do with 102(d)?

THE COURT: It may have eventually, but he has a right to ask a man who is a patent counsel recognized as a patent expert by his native country, certified, he has a right to ask him about it, certainly. And especially since this gentleman's participation, while limited, according to the testimony presented, to one patent, his participation was on behalf of one of the litigants in this case.

MR. GREENFIELD: With respect to that one patent, yes.

THE COURT: I understand that, but just the same, he has testified and he has the right to probe to see if he has some other information leading to further discovery or evidence on the issues. Yes, sir, Mr. Brumbaugh, I'll be glad to hear you.

MR. BRUMBAUGH: Your Honor, I'd like to add a comment here, and that is, I think the problem here is that the problem involves the word "issue."

MR. PARK: I haven't used the word "issue."

MR. BRUMBAUGH: I think the witness has. The word "issue" has a particular legal significance in our law and the difficulty is the witness is not qualified to interpret United States law. If he were qualified as an expert—(Interrupted).

THE COURT: Yes, and if he asked him to interpret United States law and you objected, I'd sustain the objection. But that is not what he is asking. Do I correctly understand your question?

MR. PARK: Yes, sir, exactly. I am not asking about United States law.

THE COURT: All right.

MR. PARK: Mr. Laurent, would you please tell us at what point in time in French patent procedure does the patent become effective as a tool in France to assert against alleged infringement?

MR. LAURENT: May I use the blackboard, it will be much easier.

THE COURT: Certainly. What you really mean is, when does the monopoly which the patent creates become effective?

MR. PARK: Your Honor, I will accept your question in lieu of mine.

THE COURT: A patent is a monopoly. It has been so held, I believe, by the American courts.

MR. PARK: Mr. Tannenbaum, will you rephrase it as His Honor stated it?

(Reporter repeats question as phrased by the Court.)

MR. LAURENT: The patent application is filed under date "A".

MR. PARK: Mr. Schilling, will you please put "delivery" in the record.

REPORTER: I haven't really got an answer from him yet.

MR. GREENFIELD: I think Mr. Park will agree that on some of these key terms we'd better not even translate them, just take the French term directly.

MR. PARK: Yes.

MR. LAURENT: Generally speaking, at least one year after the filing. A few months thereafter, the brevet delivery, the patent delivery, is made available to the public, to the fact that it is inserted in the official gazette, and then it is published under date "C". The date on which a patent can be asserted is the date of B, or any period between "A" and "B", the date being in fact the date at which a patent can be asserted, the date of its publication in the official gazette; provided, however, that the infringer has been served with a certified copy of the patent.

MR. PARK: So that the owner of the patent has the right between the date "A," the filing date, and date "B," the

delivery date, to assert his patent against an infringer if he delivers a certified copy of that patent application and gives the infringer a notice of it. Is that your testimony?

MR. LAURENT: Yes.

MR. PARK: At what point in time with respect to "A" through "C" letters that you have there does the patent owner have the right to collect damages from an infringer?

[COLLOQUY BETWEEN COUNSEL AND COURT OMITTED]

MR. LAURENT: There are two possibilities. If the patent has been delivered and made available for public inspection through insertion in the official gazette, one can serve notice through judicial action, through court action, to the party being the presumed infringer. There is another possibility, that one does not serve notice of being the holder of the patent, but serves a certified copy issued by the Patent Office. The second possibility is the fact that one submits a certified copy, certified, conformed, true and correct copy by the Patent Office and then takes legal action. In both cases one can obtain damages only if one has filed legal action in proper and due form, and the onset of damages can start in the first hypothetical cases at point "B," and in the second hypothetical cases with the serving of the official copy.

MR. PARK: And what is the earliest date that you can obtain the official copy under French patent practice, a certified copy?

MR. LAURENT: Under the old French law?

MR. PARK: Yes.

MR. LAURENT: I do not recall exactly, but please keep in mind the following: All patents that have been filed are automatically placed under secrecy so that the national defense authorities can have an opportunity to select those likely to be of interest to them, and this way take a period of three to four months. Then your application passes through a number of different departments and it may be one week to three to four months that you can obtain such a copy.

MR. PARK: You can—?

MR. LAURENT: You can obtain such a copy. And the time lapse to obtain a certified copy is one week up to three to four months.

MR. PARK: And this is before the delivery date?

MR. LAURENT: Prior to the date on which it is made available to the public.

MR. PARK: But it can also be obtained before the delivery date, can it not?

MR. LAURENT: Yes.

MR. BRUMBAUGH: Could that question be clarified, obtained by whom?

MR. PARK: By the owner of the patent?

MR. LAURENT: Only.

MR. PARK: All right, the owner of the patent can obtain the certified copy prior to the delivery date.

MR. LAURENT: Only the owner of the patent or his attorney.

* * * * * * * * * *

RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE L'INDUSTRIE

SERVICE de la PROPRIÉTÉ INDUSTRIELLE

BREVET D'INVENTION

P.V. n° 994.328 — N° 1.427.091

Classification internationale : D 02 d — D 03 c

Perfectionnements aux métiers fausse torsion pour la texturisation de fils synthétiques.

Société dite : MOULINAGE ET RETORDERIE DE CHAVANOZ résidant en France (Isère).

Demandé le 13 novembre 1964, à 14h 39m, à Paris.

Délivré par arrêté du 27 décembre 1965.

(*Bulletin officiel de la Propriété industrielle*, n° 6 de 1966.)

Brevet d'invention dont la délivrance a été ajournée en exécution de l'article 11, § 7, de la loi du 5 juillet 1844 modifiée par la loi du 7 avril 1902.)

Il est connu de texturiser des fils synthétiques sur des métiers « fausse torsion », c'est-à-dire comportant des broches donnant aux fils une fausse torsion qui remonte en arrière dans des éléments de chauffage, assurant la fixation de la fausse torsion au refroidissement ultérieur. Ce procédé de texturisation a pris un très grand développement ces dernières années et le matériel nécessaire a en même temps subi une évolution importante.

Dans un des systèmes utilisés dans ce domaine les fils subissent le chauffage au contact avec des éléments chauffants métalliques convexes fixes. Initialement on avait prévu des éléments creux avec circulation intérieure d'un fluide chauffé à une température constante réglée. Par la suite, on a mis en œuvre le fluide électrique également avec réglage approprié. Le dispositif employé était d'abord une tige métallique cintrée, dite « baleine de parapluie », constituant elle-même la résistance électrique chauffée par effet Joule. Par la suite cette tige a été remplacée par un tube métallique cintré monté précédemment en résistance électrique. Ces tubes avaient l'avantage d'une isolation thermique plus facile. Tous les tubes étaient réunis en série et étaient soigneusement tarés pour assurer une température constante de tube à tube.

Pour la mesure de la température et en vue de permettre le réglage un des tubes au moins d'un métier était exempt de fil et contenait une sonde thermique reliée à des instruments de contrôle et de réglage.

L'objet de la présente invention est un tube de chauffage pour métiers « fausse torsion » avec une section à plusieurs lobes subdivisant le tube en plusieurs canaux juxtaposés, un canal contenant une sonde thermique, électrique, alors que les autres canaux contiennent le passage de fils à chauffer. Chaque tube actif fait partie d'une position de travail avec d'autres éléments tubulaires, c'est-à-dire notamment une bobine débitrice, des délivreurs, une broche de fausse torsion et une bobine de réception.

L'invention ne s'étend pas seulement aux tubes cintrés à chauffage électrique direct par résistance, mais également aux tubes droits. Le chauffage peut également être indirect. De toute façon l'invention n'est nullement limitée à l'exemple de réalisation ci-après, mais couvre toute variante dans le même esprit. Le but est un élément de chauffage à plusieurs canaux parallèles dont un contient une sonde thermique, alors que les autres servent au passage de fil, la sonde se trouvant dans les mêmes conditions thermiques que les fils.

Le système a de plus l'avantage de permettre une multiplication de la production des métiers qui est évidemment déterminée en premier lieu par le nombre de canaux de passage de fil. Avec des tubes ayant une section à trois lobes on double la production pour une même vitesse de travail. Un autre avantage est que chaque position de travail peut être contrôlée effectivement et efficacement quant au régime thermique.

L'exemple de réalisation permettra de mieux comprendre l'invention qui est illustrée par le dessin schématique sur la planche annexée.

Dans le dessin on a représenté un exemple de réalisation avec un tube ayant une section à 3 lobes, en « feuille de trèfle ». Un tel tube peut être obtenu par passage d'un tube plus grand dans une filière appropriée, déformant le tube.

Le tube de l'exemple représenté en section, comporte 3 canaux (1), (2), (3), reliés par des diaphragmes (4), (5), (6), créés à la déformation du tube initial. Ces diaphragmes peuvent être clos par serrage complet des cloisons opposées, comme dans la section représentée, mais ce n'est pas obligatoire.

Le canal (1) contient une sonde thermique reliée à des appareils de contrôle et de réglage permet-

tant de vérifier la température du canal (1) à chaque moment et à la maintenir entre des limites étroites prédéterminées.

Les canaux (2) et (3) contiennent des fils (8) et (9), subissant le chauffage [illegible]

Dans le chauffage direct par résistance du tube la température est la même partout, sous réserve de pertes par radiation qui peuvent différer légèrement par les 3 canaux, si l'isolation thermique n'est pas absolument uniforme.

RÉSUMÉ

1° Perfectionnement aux métiers « fausse torsion » pour la texturisation de fils synthétiques et remarquable en ce que les métiers comportent des tubes de chauffage avec une section à plusieurs lobes, formant des canaux parallèles multiples dont un contient une sonde thermique, reliée à des appareils de contrôle et de réglage, alors que les autres servent au passage de fils à chauffer individuellement pour la fixation de la fausse torsion appliquée par des broches individuelles en aval des tubes.

L'invention peut comprendre en outre les [illegible] ments ci-après isolément ou en combinaisons [illegible] ques :

a. Les tubes peuvent être chauffés par [illegible] moyens;

b. On utilise le chauffage électrique, direct [illegible] indirect;

c. Les tubes peuvent être droits ou cintrés;

d. On utilise notamment un tube cintré, à chauffage direct par résistance et avec une section à [illegible] lobes, avec diaphragmes intermédiaires cloisonnés ou non.

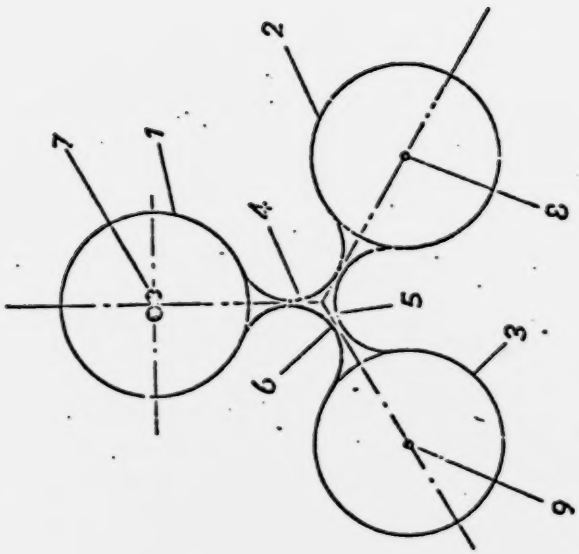
2° Métiers « fausse torsion » pour la texturisation de fils synthétiques et avec productivité augmentée du fait du passage simultané de plusieurs fils dans les tubes de chauffage, subdivisés en canaux individuels jumelés.

Société dite :
MOULINAGE ET RETORDERIE DE CHAVANOZ
Par procuration :
L. Sotr

Pour la vente des fascicules, s'adresser à l'Imprimerie Nationale, 27, rue de la Convention, Paris (15e).

N° 1.427.001 — Société dite : — Pl. unique

Moulinage et Retorderie de Chavanoz



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TRANSLATION

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French Republic
Ministry of Industry
Patent Service

PATENT
P.V. No. 994,828
International class.

No. 1,427,001
D 02 d—D 05 c

Improvements in false twist frames to texturize synthetic yarns

Company known as: Moulinage et Retorderie de Chavanoz, residing in France (Isere)

Filed November 13, 1964 at 1439 hours at Paris
Allowed by order of December 27, 1965

(Bulletin officiel de la Propriete industrielle, No. 6 of 1966)

(Patent whose allowance was delayed pursuant to article 11, 7 of the law of July 5, 1844 as amended by the law of April 7, 1902)

It is known how to texturize synthetic yarns on false twist frames, i.e., comprising spindles giving the yarns a false twist which goes back up in the heating elements, assuring the setting of the false twist upon further cooling. This texturizing process has been greatly developed in recent years and at the same time the necessary equipment has undergone a considerable evolution.

In one of the systems used in this field the yarns undergo heating in contact with stationary convex metal heating elements. Initially, hollow elements had been provided with interior circulation of a fluid heated to a regulated constant temperature. Then, electric current also was used with suitable regulation. The device used was first a curved metal channel, called "umbrella ribs," itself constituting the electric resistance heated by Joule effect. Then this channel was replaced by a curved

metal tube previously mounted in an electric resistance. The tubes had the advantage of an easier thermal insulation. All the tubes were joined in series and were carefully calibrated to assure a constant temperature from tube to tube.

To measure the temperature and for its regulation, at least one of the tubes of the frame was free of yarn and contained a thermal probe connected to control and regulating instruments.

The object of the present invention is a heating tube for false twist frames with a section with several lobes subdividing the tube into several twin channels, one channel containing an electric, elastic probe, whereas the other channels permit the passage of the yarns to be heated. Each active channel is part of a work position with the other usual elements, i.e., particularly, a delivery reel, delivery rolls, a false twist spindle and a receiving reel.

The invention extends not only to the curved tubes with direct electric heating by resistance, but also to the straight tubes. Heating can also be indirect. In any case, the invention is in no way limited to the following embodiment. but covers any variant in the same spirit. The purpose is a heating element with several parallel channels one of which contains a thermal probe, whereas the others serve for passage of the yarn, the probe being under the same thermal conditions as the yarns.

The system further has the advantage of permitting the multiplication of the production of frames which is obviously governed in the first place by the number of yarn passage channels. With tubes having a section with three lobes, production is doubled for the same working rate. Another advantage is that each working position can be controlled effectively in regard to the thermal conditions.

The example of embodiment will make it possible to understand better the invention which is illustrated by the hypothetical drawing on the accompanying sheet.

Translation

In the drawing, there is shown an embodiment with a tube having a 3-lobe section, like a clover leaf. Such a tube can be obtained by passage of a larger tube in a suitable die, deforming the tube.

The tube of the example, shown in section, comprises 3 channels 1, 2, 3, connected by diaphragms 4, 5, 6, created upon deformation of the initial tube. These diaphragms can be closed by complete locking of the opposite partitions, as in the section shown, but it is not obligatory.

Channel 1 contains a thermal probe connected to control and regulation apparatus making it possible to check the temperature of channel 1 at each moment and to keep it in narrow predetermined limits.

Channels 2 and 3 contain yarns 8 and 9, undergoing heating.

In direct heating by resistance of the tube the temperature is the same everywhere, except for losses by radiation, which can differ slightly, by the three channels, if the thermal insulation is not absolutely uniform.

Claims

1. Improvement in false twist frames for texturizing of synthetic yarns and remarkable in that the frames comprise heating of tubes with several lobes, forming multiple parallel channels one of which contains a thermal probe, connected to control and regulating apparatus, whereas the others serve for the passage of the yarns to be heated individually for setting of the false twist applied by individual spindles upstream from the tubes.

The invention can further comprise the following elements separately or in any combinations:

a. The tubes can be heated by any means;

b. Direct or indirect electric heating is used;

Translation

c. The tubes can be straight or curved;

d. Particularly, use is made of a curved tube, with direct heating by resistance with a 3-lobe section, with or without intermediate partitions.

2. False twist frames for texturizing of synthetic yarns and with productivity multiplied by the fact of the simultaneous passage of several yarns in heating tubes, subdivided into twin individual channels.

Company known as:
Moulinage et Retorderie de Chavanoz
by attorney:
L. SOEP

B 18

ÉTUDE

à Maître [illegible] de HENDAYE

DÉCLARATION DE SIÈGE DE BIENS

DÉCLARATION DE SIÈGE DE BIENS

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Pour sous-contrat

Pour sous-marché

Pour sous-commande

Pour sous-achat

Pour sous-vente

ARTICLE 11 OF THE FRENCH PATENT LAW OF 1844 AS AMENDED UP TO MAY 20, 1955

ART. 11 (*loi du 7 avril 1902*).—Les brevets dont la demande aura été régulièrement formée seront délivrés sans examen préalable, aux risques et périls des demandeurs, et sans garantie soit de la réalité, de la nouveauté ou du mérite de l'invention, soit de la fidélité ou de l'exactitude de la description.

Un arrêté du Ministre, constatant la régularité de la demande, sera délivré au demandeur et constituera le brevet d'invention.

A cet arrêté sera joint un exemplaire imprimé de la description et des dessins mentionnés dans l'article 24, après que la conformité avec l'expédition originale en aura été reconnue et établie au besoin.

La première expédition des brevets sera délivrée san frais.

Toute expédition ultérieure, demandée par le breveté ou ses ayants cause, donnera lieu au payement d'une taxe.

Les frais de dessin, s'il y a lieu, demeureront à la charge de l'impétrant.

La délivrance n'aura lieu qu'un an après le jour du dépôt de la demande, si ladite demande renferme une réquisition expresse à cet effet (loi du 27 janvier 1944). Celui qui aura requis le bénéfice de cette disposition pourra y renoncer à un moment quelconque de ladite période d'un an.

Le bénéfice de la disposition que précède ne pourra être réclamé par ceux qui auraient déjà profité des délais de priorité accordés par des traités de réciprocité, notamment par l'article 4 de la Convention internationale pour la protection de la propriété industrielle du 20 mars 1883.

TRANSLATION OF ARTICLE 11 OF THE FRENCH PATENT LAW OF 1844 AS AMENDED UP TO MARCH 20, 1955

Art. 11.

Patents applied for in due form shall be granted without examination, at the risk and peril of the applicants and without guarantee of the reality, novelty, or merit of the invention, or the accuracy or correctness of the specification.

A decree of the Minister certifying the regularity of the application shall be issued to the applicant and shall constitute the patent of invention.

To this decree shall be annexed a printed copy of the specification and drawings mentioned in Article 24 after its conformity with the original has been verified and, if necessary, established.

The first copy of patents shall be delivered gratis.

All subsequent copies required by the patentee or by persons authorized by him shall be subject to a tax.

The cost of the drawings, if any, shall be paid by the person requesting them.

The patent shall not be issued until one year after the date of filing the application if the said application contains an express request to that effect.

Any person who shall have requested the benefit of this provision may renounce it at any time within said one year period.

The benefit of the foregoing provision cannot be claimed by persons who have already profited by periods of priority given by treaties of reciprocity, and especially by Article 4 of the International Convention for the Protection of Industrial Property of March 20, 1883.

B 21

May 14, 1968 H. CROUZET 3,382,656

FALSE-TWIST FRAMES AND METHOD FOR TEXTURING SYNTHETIC FILAMENTS

Filed Jan. 3, 1966

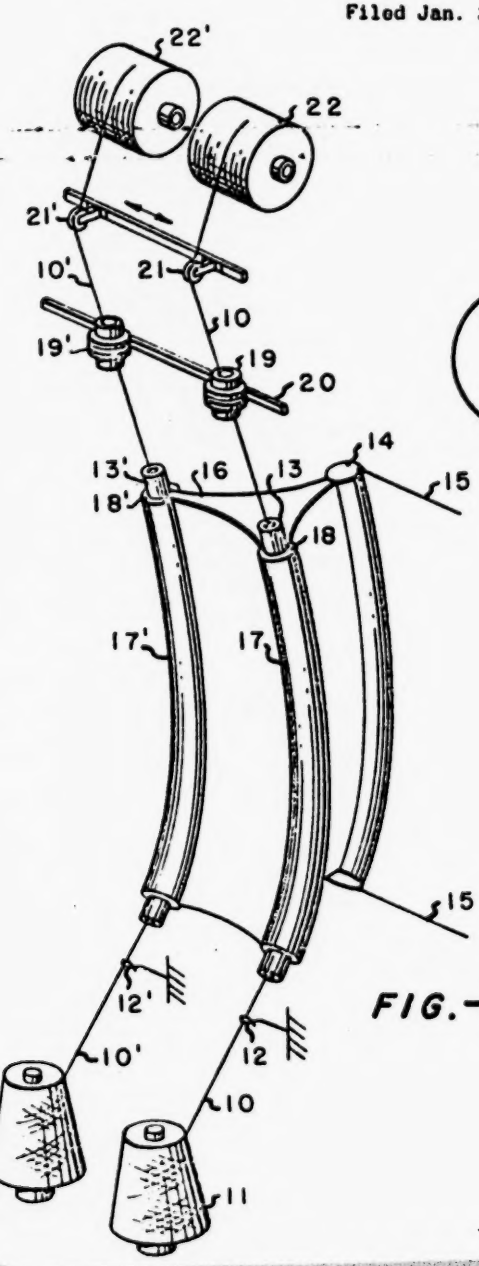

FIG.-2-

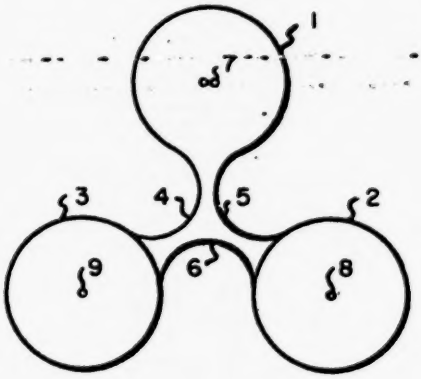

FIG.-1-

INVENTOR.
HENRI CROUZET

BY

ATTORNEY

United States Patent Office 3,382,656 Patented May 14, 1968

3,382,656

FALSE-TWIST FRAMES AND METHOD FOR TEXTURING SYNTHETIC FILAMENTS

Henri Crovetto, Rives, Isère, France, assignor to Moulinage et Retorderie de Chavanoz, Chavanoz, Isere, France, a corporation of France

Filed Jan. 3, 1966, Ser. No. 518,410
4 Claims. (Cl. 57—34)

ABSTRACT OF THE DISCLOSURE

A false-twist apparatus for the crimping of a textile yarn including delivery means for advancing the yarn from supply to takeup and between the delivery means, twisting means and heat setting means for application of false twist and for heat setting twist within the yarn. The improvement comprises a heating tube having at least three lobes forming multiple parallel channels, each connected by a heat transfer diaphragm. One of the lobes contains a temperature probe, and at least two other of the lobes serve as passageways for individual filaments. Resistance electrical heating means are provided for heating filaments disposed within the lobes, the filaments being individually heated for setting the false twist applied by an individual spindle downstream of the tube.

It is known to texture synthetic filaments on "false-twist" spinning frames, i.e., spinning frames comprising spindles which impart to the filaments a false twist which progresses backwards into a heating element, which set the false twist on subsequent cooling. This texturing method has been very greatly developed in recent years and the equipment required has at the same time undergone a considerable change.

In one of the systems employed in this field, the threads undergo the heating in contact with fixed convex metallic heating elements. Initially, hollow elements were provided through which there was circulated a fluid heated at a regulated constant temperature. Subsequently, electric heat was employed, also with appropriate adjustment. The device employed was first of all a bent metallic channel, called an "umbrella rib," which constituted in itself the electric resistor heated by the Joule effect. This channel was later replaced by a bent metallic tube connected as before as an electric resistor. Tubes had the advantage that they were more readily thermally insulated. All the tubes were connected in series and were carefully calibrated to ensure a constant temperature from tube to tube.

For measuring the temperature and for adjusting it, at least one of the tubes of a spinning frame was free from filament and contained a temperature probe connected to monitoring and adjusting instruments.

The object of the present invention is to provide a heating tube for "false-twist" spinning frames having a cross-section comprising a number of lobes subdividing the tube into a number of coupled channels, one channel containing a resilient electric probe, while the other channels permit the passage of filaments to be heated. Each active channel forms part of an operating position with the other usual elements, i.e., notably a supply reel, delivery members, a false-twist spindle and a take-up reel.

The invention not only includes bent tubes directly electrically heated by resistance, but also straight tubes. The heating may also be indirect. In any case, the invention is in no way limited to the following embodiment, but covers any variant in the same spirit. The object is to provide a heating element comprising a number of parallel channels, one of which contains a temperature probe, while the others serve for the passage of filament, the probe being subjected to the same thermal conditions as the filaments.

In addition, the system has the advantage that it permits multiplications of the output of the spinning frames, which is obviously primarily determined by the number of channels for the passage of filament. With tubes having a cross-section comprising a plurality of lobes, particularly three lobes, the output is doubled for the same working speed. Another advantage is that each working position may be effectively controlled in regard to the thermal conditions.

The embodiment will enable the invention, which is illustrated by the diagrammatic drawing on the accompanying sheet, to be more readily understood.

In FIGURE 1, there is illustrated an embodiment comprising a tube having a three-lobe or "clover leaf" cross-section. Such a tube may be obtained by passing a larger tube through an appropriate die by which the tube is deformed.

In FIGURE 1, the tube of the example, which is illustrated in section, comprises three channels 1, 2 and 3 connected by diaphragms 4, 5 and 6 created in the deformation of the initial tube. These diaphragms may be closed by complete clamping of the opposed partitions, but this is not essential. Each of the plurality of lobes or tubes may, of course, constitute separate tubes that are interconnected by a good heat conducting means, such as copper or alloy, or equivalent heat conducting metal means.

The channel 1 contains a temperature probe connected to monitoring and adjusting devices for checking the temperature of the channel 7 at each instant and maintaining it between predetermined narrow limits.

The channels 2 and 3 contain filaments 8 and 9 which undergo the heating.

In the direct resistance heating of the tube, the temperature is the same throughout, subject to losses by radiation, which may differ slightly in the same channels, if the thermal insulation is not absolutely uniform.

Referring to FIGURE 2 of the drawing, the filaments 10 and 10' pass from the cones 11 and 11' through guide means 12 and 12' and then through parallel lobes 13 and 13', which in the form shown is curved so that the filaments contact the surfaces of the tubes as they are fed therethrough. In some instances, however, the tubes may be made straight instead of curved and the filaments be caused to contact the sides of the tubes by suitable guide means. The heating tubes that comprise lobes 13 and 13' are connected to tube 14 through heat transfer means 16 with terminals 15 which are connected to a suitable source of electric current for heating the tubes by resistance effect. Lobes 13 and 13' are preferably interconnected by a heat transfer means that is preferably made of the same metal as the lobes, so as to have the same resistance, and is preferably made from a metal known for its high resistance properties, for example, of nickel chrome alloy or metals or alloys of a lower resistance. The applied current is preferably low. The heater tubes 13 and 13' are interconnected by heat transfer means 16. The tubes may be thermally insulated at least in the areas where the tubes are not connected by enclosing them in a larger tube 17 and 17' which are cut away to allow the heat transfer means 16 to be joined to the heater tubes, and are lined by an insulating material, for example, vermiculite which fills the space between the inner wall of the large tubes and surfaces of the heater tubes or resistor tubes 13 and 13'. The ends of the large tube 17 are closed by disc 18 and 18', for example, by a plastic material with an orifice the size of the diameter of tube 13 and 13'.

The filaments after passing through the tubes 13 and 13' are fed through false twist spindles 9 and 18' which

are rotated by simple means indicated as a belt 20 and is adapted to produce a twist in the filament which feeds back on the filament towards the heating tubes 13 and 13' until arrested by contact with the filaments with the surfaces of such tubes. The temperature of the tubes 13 and 13' is adapted to heat the filaments for setting the false twist. Finally, the filaments 10 and 10' pass through a guide 21 and 21' and are then wound onto spools 22 and 22'. Therefore, by means of this invention at least two yarns and actually many more may be advanced through adjacent parallel lobes of a single tube, or through adjacent individual tubes that are interconnected by a suitable heat transfer means with a means located in an adjacent tube that is also connected by heat transfer means to each of the said other lobes or tubes for measuring and controlling temperature throughout the heater tube system.

The invention may comprise in addition the following elements singly or in any combination:

(a) The tubes may be heated by any means.

(b) Direct or indirect electric heating is employed.

(c) The tubes may be straight or bent.

(d) There is employed notably a bent tube directly heated by resistance and having a cross-section comprising three lobes, with optionally partitioned intermediate diaphragms.

Each of the individual yarns that are processed by the method and apparatus of this invention may be false twisted by individual spindles or by a single spindle that twists a number of yarns. In the second case, a special yarn guide means is needed so that the plurality of yarns are properly fed into the false-twist spindle.

Having thus described the invention, what is claimed is:

1. In a false-twist apparatus for the crimping of a textile yarn including delivery means for advancing the yarn from supply to takeup and between said delivery means, twisting means and heat setting twist within the yarn, respectively, the improvement comprising a heating tube having at least three lobes forming multiple parallel channels, each connected by a heat transfer diaphragm, one of said lobes containing a temperature probe, and at least two other of said lobes serving as passageways for individual filaments, resistance electrical heating means for heating filaments disposed within said lobes, whereby the filaments are individually heated for setting the false twist applied by an individual spindle downstream of the tube.

2. The apparatus of claim 1 wherein the heater tube is arcuate in shape.

3. The apparatus of claim 1 further characterized in that the tube is straight.

4. The apparatus of claim 1 wherein the heater tube is comprised of at least four lobes.

References Cited

UNITED STATES PATENTS

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FRANK J. COHEN, *Primary Examiner.*

W. H. SCHROEDER, *Assistant Examiner.*

B 28 24

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ET DE LA PROPRIETE INDUSTRIELLE

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DUPLICATA

PARIS, le 27 Décembre 1965

DIVISION DES BREVETS

BUREAU ADMINISTRATIF

MM/

Monsieur Léonard SORP
184 Faubourg St.Honoré
PARIS 8e

Monsieur,

J'ai l'honneur de vous aviser que le brevet d'invention que vous avez demandé le 13 Novembre 1964, sous le N° P.V. : 994.828
au nom de :

Société dite : MOULINAGE ET RETORDERIE DE CHAVANOZ

pour : " Perfectionnements aux métiers fausse torsion pour la texturisation de fils synthétiques "

vient de vous être délivré, par arrêté de ce jour, sous le N° 1427001
(classification internationale : D 02 d // D 06 c

La présente délivrance est faite en application des dispositions de l'article 11 de la loi du 5 Juillet 1844, sans examen préalable, à vos risques et périls et sans garantie soit de la réalité, de la nouveauté ou du mérite de l'invention, soit de la fidélité ou de l'exactitude de la description.

Le brevet vous sera remis ultérieurement, quand l'Institut National de la Propriété Industrielle aura reçu de l'Imprimerie Nationale l'exemplaire imprimé de la description et des dessins, qui doit y être annexé.

Agréez, Monsieur, l'assurance de ma considération distinguée.

Pour le Chef de Service
Directeur de l'Institut National
de la Propriété Industrielle
Pour le Chef de Division

S. Carpentier

VU pour la légalisation de la Signature
de Madame S. CARPENTIER
du Service de la Propriété Industrielle
PARIS, le 6 JUIN 1972

P/L'Administrateur Civil de 2ème Classe
Chef du Bureau des Statuts et de la Réglementation
L'Attaché d'Administration
Sous-Chef du Bureau des Statuts
et de la Réglementation
D. RARAT

AVIS IMPORTANT - Les annuités doivent, sous peine de déchéance, être acquittées chaque année avant le dernier jour du mois de la date anniversaire du dépôt, ou dans les six mois qui suivent moyennant le paiement d'une taxe supplémentaire, même si le titre n'est pas encore délivré.

B 26 25

TRANSLATION

FRENCH REPUBLIC

MINISTRY OF INDUSTRIAL AND SCIENTIFIC DEVELOPMENT

Board of the Chambers of Commerce and Industry and Patents

PATENT OFFICE
26 bis, rue de Leningrad, Paris 8
Tel 387-56-00 522-52-90
DEPARTMENT OF PATENTS
Administration

HVA/

December 27, 1965

Mr. Leonard Soep
184 Faubourg St-Honore
Paris 8

Dear Sir:

I am pleased to inform you that the patent that you have applied for on: NOVEMBER 13, 1964, under Serial No.: 994,828 in the name of:

Company called: MOULINAGE ET RETORDERIE DE CHAVANOZ
for: "Improvements to false twist machines for the texturizing of synthetic yarns"

has just been issued to you, as per decree under today's date, under No. 1,427,001—(international classification: D 02 d// D 06 c)

The present issuance is delivered as per the provisions of article 11 of the law of July 5, 1844, without preliminary examination at your own risk and peril and without guarantee, either of the reality, novelty or merits of the invention, or of the accuracy or correctness of the description.

The patent will be sent to you subsequently, as soon as the Patent Office will have received from the state press the printed

copy of the description and drawings, which must be attached thereto.

Very truly yours,
For the head of Department

Director of Patent Office
For the Division Chief

s/ S. CARPENTIER

For legalization of the signature
of Mrs. S. CARPENTIER, of the
Patent Office,

Paris, June 6, 1972
For the Manager 2nd class
Chief of the Bureau of Statutes and Regulations
P. De Rivoire

The Administration Attache
Assistant Chief of the Bureau of Statutes
and Regulations

s/ D. KARAM
D. Karam

IMPORTANT NOTICE—Annuities must be paid, under penalty of forfeiture, every year prior to the last day of the month of the anniversary date of filing, or within the next six months after payment of an additional tax, even if the patent document has not yet been issued.

B 29 27

Letter From L. Soep to Monsieur Crouzet

Monsieur CROUZET
A. R. C. T.

D. BREVETS
LS/MC

Paris, le 16 novembre 1964

Messieurs,

Nous vous prions de noter que nous avons déposé, le 13.11.64, une demande de brevet sous le numéro

994.828 au nom de MOULINAGE ET RETORDERIE DE CHAVANOZ

pour: "PERFECTIONESMENTE AUX METIERS "FAUSSE TORSIOE" POUR LA TEXTURISATION LE FILS SYNTETIQUES"

Veuillez trouver ci-joint copie du texte déposé.

Veuillez agréer, Messieurs, nos salutations distinguées.

L. SOEP
CV 001828

B 39 A

TRANSLATION

Monsieur CROUZET
A. R. C. T.

D. BREVETS
LS/MC

Paris, le 16 November 1964

Gentlemen,

We beg you to note that we have filed, 11.13.64, an application for patent under the number

994.828 in the name of MOULINAGE ET RETORDERIE DE CHAVANOZ

for: "IMPROVEMENTS IN "FALSE TWIST" MACHINES FOR THE TEXTURIZATION OF SYNTHETIC YARNS"

Please find attached copy of the filed text.

Please accept gentlemen our distinguished salutations.

L. SOEP
CV 001828

B 31 29

LETTER FROM L. SOEP TO DMRC

MOULINAGE ET RETORDERIE DE CHAVANOZ

POUR LA FABRICATION ET LA VENTE DE TOUS TEXTILES SYNTHÉTIQUES

DIRECTION À CHAVANOZ (Isère)

TÉLÉPHONE : LYON (78) 69-74-31
TÉLÉGRAMME : TISER LYON - MCC CHAVANOZ
GARE : PONT-DE-CHÉRUY (Isère)

Mr. NORMAN ARMSTRONG
DURRING - TAYLOR RESEARCH Co
P.O.BOX 1027
SPARTANBURG (S.C.)

V/Référence

V/lettre du

N/Référence D.BREVETS Ls/JL

Objet

CHAVANOZ le
Paris, 8th December 1966

Dear Norman,

Please find herewith a translation made in Great Britain of a patent application filed in France by our company on the 15th of November 1965.

We beg you to examine whether a corresponding application should be filed in the United States.

If you choose to file we want you to postpone the filing till the end of the priority period. Of course, you may adopt the wording in any suitable way ; the translation does not seem to be very good.

Yours sincerely,

L.SOEP

RECEIVED
DEC 11 ...
MEDICAL ...

DN 015844

B 32 30

LETTER FROM DMRC TO L. SOEP

December 12, 1964

Leo M. Soep, Esq.
Moulinage et Retorderie de Chavanoz
5 & 7, Avenue Percier
Paris 8°, France

Dear Leo:

Thank you for sending me with your letter of December 8 a translation of the patent application filed in France by Chavanoz relating to loom improvements. I am passing it along to Walter Mueller for examinatio of the subject matter and to decide whether it would be advantageous to file a corresponding application in the United States prior to Novembe 13, 1965.

When the study has been made, Walter will get in touch with you directly to give you our conclusions.

With kind regards and all good wishes of the season,

Sincerely yours,

Norman C. Armitage

NCA:hm
cc: Mr. W. E. Mueller